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ABSTRACT

This monograph presents an overview of Pennsylvania's law governing collective bargaining for public employees (Act 195) and reviews Pennsylvania's experience under the law since its enactment in 1970. The passage of Act 195 for the first time made it possible for Pennsylvania public employees to bargain collectively and to legally strike when such bargaining fails to produce an agreement. Although Act 195 applies to all public employees except policemen and firemen, the monograph focuses mainly on its application to the public schools. Chapter 1 briefly discusses what the act is and presents statistics on strikes in Pennsylvania public schools since its enactment. Chapter 2 presents an analysis of the act and its strengths and weaknesses. Chapter 3 discusses the implementation of the act and its requirements. Chapter 4 focuses on the scope of bargaining under the act. Chapter 5 describes the state of public employee labor relations in Pennsylvania before passage of the act. The appendix presents the complete text of Act 195 as enacted. (JG)

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Act 195

- **What Act 195 is**
- **Analysis of the law**
- **Implementation of Act 195**
- **Scope of bargaining**
- **What existed before**

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A completely revised and updated review of the Pennsylvania Public Employe Relations Act – the collective bargaining law for school employes and other public employes

Published by the PENNSYLVANIA SCHOOL BOARDS ASSOCIATION, INC.

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FOREWORD

With the enactment into law of Act 195 (SB 1333) on July 21, 1970, Pennsylvania placed into operation a labor relations law that, for the first time, made it possible for public employes — including commonwealth employes and employes of the public schools, but excluding policemen and firemen — to bargain collectively for their services and to require that their employers reduce to a written, legally binding agreement the understanding arrived at through such bargaining.

Going farther than any other law then existing in any state to establish rather precise ground rules under which such labor relations should exist, the Pennsylvania act became the first such mainland law to permit and legalize strikes by public employes.

This overview of the act, and the experience under its operation since enactment of the law, is based upon statewide experience that has occurred largely in the public schools. However, the lessons learned under this new law are equally applicable in principle to all public employers and employe groups, not just to public schools and school employes. Significant precedents under the act have been carefully chronicled so that this guidebook can be used as a comprehensive basic reference by all those who have an interest in the operation of this law.

This fourth printing of this guidebook completely updates and revises the material presented in the earlier editions. It presents the basic teachings that have developed under the act, and also presents the experience of five years operation of the law.

Wherever possible, credit has been given to the person or source responsible for a given statement or view expressed in this book. PSBA Executive Director Fred M. Heddinger has been responsible for much of the material not attributed to someone else in this book.

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Chapter I

What Act 195 is

Early experience

Act 195 of 1970 — the Pennsylvania Public Employe Relations Act — is, indeed, a labor relations law governing the interplay between public employers and public employes who desire to group together to bargain collectively for their services. Public employers include the commonwealth itself, its various political municipal subdivisions including local municipalities and school districts, various agencies of these governmental entities, and other agencies that perform a public service and qualify as a public employer under the act. Public employes covered in the law include teachers, custodians, other school employes, municipal employes, state government employes, and employes of agencies or activities that perform a public service and qualify as a public employer.

Based upon more than 30 years of labor law experience in private sector employment, the Pennsylvania law has transplanted many of the ground rules, established through this experience, into the field of public employment in Pennsylvania. However, it has also recognized — in certain provisions of the law — rather fundamental differences that exist between private and public employment.

It is this fundamental difference that is significant to many public and quasi-public agencies. For the most part, the choice is not whether or not such agencies and activities will be organized and thus controlled by such law. Rather, the choice is most often whether or not such agencies or activities will be controlled by the National Labor Relations Act and fall under the jurisdiction of the National Labor Relations Board (NLRB), or controlled by this state law under Pennsylvania Labor Relations Board (PLRB) cognizance. Agencies that are clearly public agencies have no choice — they are clearly controlled by Act 195. However, semi-public or

quasi-public agencies — agencies that may perform a sufficient public service to permit them to fall under the cognizance of Act 195 — should examine carefully the significance of having applied to them the ground rules, now well established, of the National Labor Relations Act, or the ground rules of the Pennsylvania act which are still evolving. In general, it would appear that such activities may fare better under the operation of Act 195 despite its rather stormy early history experience. As this printing goes to press, it is still being debated at the national level whether or not all public employes should come under the jurisdiction of federal law.

Two factors have had a large influence on the operation of Act 195 during its first years of operation. For most public employers, especially school boards and chief school administrators, the operation of a law that rather precisely regulates working relationships between groups of employes and their employers is still a new experience. Confronted with often unrealistic demands by employe bargaining agents who have coordinated their demands statewide, local public employers have had difficulty fully comprehending the changes that have taken place. An urgent need exists for cooperation among public agencies so that a given public employer does not become a new base for further demands by agents of employe groups on other public employers. This cooperation is improving, but has a long way to go.

Both public employe groups and public employers have suffered from inexperience in dealing with collective bargaining procedures as required under the law. Employe groups, especially teacher groups, have found it possible to more easily coordinate and direct their bargaining efforts on a statewide basis. Thus, in addition to having much greater financial resources with which to work than do public employers, employe organizations have been able to impose a statewide direction and control on local bargaining units so that an overall statewide master strategy has resulted. A federal law would likely enhance the ability of employe organizations to do this nationally as well as on a state level.

The degree of unionization in the public schools that has occurred under Act 195 is virtually complete — practically every school district now has at least one bargaining unit that falls under the cognizance of the act and the PLRB. Municipal employes at the local government level have been somewhat slower to become organized, but increasing evidence is found of competition between unions to represent every form of public service.

Prior to the enactment of Act 195, several court decisions had determined that public employers under Pennsylvania law had no authority to enter into binding bargaining agreements with agents of public employes. One of the unfortunate provisions of Act 195 — discussed later in this book — preserved the terms of such agreements, thus giving such agreements, after the fact, a legal status that they did not enjoy prior to the passage of the act.

'Limited' right to strike?

Act 195 legalized strikes by public employes in Pennsylvania "under limited conditions." Since the advent of Act 195, there has been a total of 302 strikes in Pennsylvania. These strikes reflect the disregard for public welfare that was predicted before the legalization of strikes by Act 195.

Unfortunately, the manner in which the law has been administered by state agencies has worsened the problem. The so-called "limited right to strike" envisioned when Act 195 was signed into law became, too often, a misuse of power by employe unions, which have been aided in their actions by the administration of the law at all levels of state government. Not a very pretty picture!

A breakdown of strike information by school year (July 1 to June 30) is presented in the following statistical tables:

TABLE 1: NUMBER OF STRIKES* IN PUBLIC SCHOOLS IN PENNSYLVANIA (By School Year – July 1 to June 30)

School Year	Number of Strikes
1970-71	37
1971-72	36
1972-73	49
1973-74	45
1974-75	59
1975-76	76
	Total 302

* Includes all disruptions to the normal school program by withholding of services in public schools, vocational-technical schools, intermediate units, and community colleges by teachers and other school employe organizations.

TABLE: 2 TOTAL AND AVERAGE NUMBER OF EMPLOYE STRIKE DAYS* (In Pennsylvania Schools)

School Year	Total Number of Employe Strike Days	Average Number of Strike Days
1970-71	282	7.6
1971-72	308	8.6
1972-73	627	12.8
1973-74	465	10.3
1974-75	495.5	8.4
1975-76	970	12.8

* Does not include Saturdays, Sundays and other nonscheduled workdays.

From 1970 through 1974, Pennsylvania experienced an increase in total number of strike days as well as an increase in the length of the average strike period. 1974-75 continued the increase in total strike days but recorded a shorter duration in the length of the average strike period; 1975-76-recorded a sharp increase both in the total employe strike days and the average duration of strikes.

TABLE 3: TOTAL NUMBER OF EMPLOYES AFFECTED BY STRIKE ACTIVITY (In Pennsylvania Schools)

School Year	Number of Employes
1970-71	11,360
1971-72	9,745
1972-73	43,062
1973-74	6,796
1974-75	12,691
1975-76	18,410

TABLE 4: NUMBER OF IDLE MAN-DAYS AS A RESULT OF STRIKE (In Pennsylvania Schools)

School Year	Total Idle Man-Days
1970-71	71,275
1971-72	88,804
1972-73	1,053,827
1973-74	70,548
1974-75	126,811
1975-76	331,605

NOTE: The Philadelphia school strikes during 1972-73 accounted for approximately 92 percent of the total idle man-days. During 1975-76 the Pittsburgh school strikes accounted for approximately 42 percent of the total idle man-days.

TABLE 5: FREQUENCY DISTRIBUTION OF STRIKE DAYS

	1970-71		1971-72		1972-73		1973-74		1974-75		1975-76	
No. of Days	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
0 - 4	7	21.9	9	25.7	14	31.3	16	35.6	21	35.6	22	29.0
5 - 9	12	37.5	14	40.0	11	24.4	11	24.4	18	30.5	20	26.3
10 - 14	9	28.1	5	14.3	4	8.8	6	13.3	13	22.0	9	11.8
15 - 19	3	9.4	4	11.4	2	4.4	5	11.1	1	1.7	6	7.9
20 - 24	1	3.1	2	5.7	3	6.7	2	4.4	3	5.1	8	10.5
25 - 29			1	2.9	3	6.7	2	4.4	2	3.4	5	6.6
30 - 34					6	13.3	2	4.4			2	2.6
35 and above					2	4.4	1	2.2	1	1.7	4	5.3
TOTALS	32*		35*		45*		45		59		76	

* Totals do not agree with Table I due to changes in reporting data during first three years.

During 1970-71, approximately 13 percent of the school strikes lasted 15 days or more; in 1971-72, 20 percent of the school strikes were 15 days or longer; during 1972-73, the percentage of school strikes lasting 15 days or longer jumped to 36 percent; 1974-75 saw only 12 percent of the school strikes lasting 15 days or longer; 33 percent of the 1975-76 strikes lasted 15 days or more.

TABLE 6: TOTAL NUMBER OF PUPILS AFFECTED BY STRIKE ACTIVITY (In Pennsylvania Schools)

School Year	Number of Pupils
1970-71	253,970
1971-72	194,066
1972-73	561,196
1973-74	120,150
1974-75	204,066
1975-76	306,369

An aggregate of 1,639,817 public school pupils (approximately 70 percent) have been affected by strike actions since the passage of Act 195.

TABLE 7: FREQUENCY DISTRIBUTION OF STRIKES BY SIZE OF BARGAINING UNIT

No. of Bargaining Unit Members	1970-71	1971-72	1972-73	1973-74	1974-75		1975-76	
	%	%	%	%	No.	%	No.	%
0 - 99	16.2	19.4	32.7	53.4	22	37.3	27	35.5
100 - 199	35.2	30.5	38.8	20.0	19	32.2	20	26.3
200 - 299	24.3	19.4	12.3	8.9	6	10.1	15	19.7
300 - 399	10.8	5.6	4.1	11.1	2	3.4	3	4.0
400 - 499	5.4	2.8	2.0	2.2	2	3.4	3	4.0
500 - 599	2.7	11.1	2.0	2.2	3	5.1		
600 - 699		5.6	2.0		1	1.7	5	6.6
700 - 799		2.8		2.2	1	1.7		
800 - 899		2.8			1	1.7	1	1.3
900 - 999			2.0				1	1.3
1,000 - 1,999	2.7				2	3.4		
2,000 - 2,999								
3,000 - 4,999	2.7						1	1.3
10,000 & above			4.1					
TOTALS	100.0	100.0	100.0	100.0	59	100.0	76	100.0

Most strikes have taken place in Pennsylvania's "smaller" school systems; during 1975-76, almost 82 percent of the school strikes involved districts having 200 members or less in the bargaining unit.

Chapter II

Analysis of the law

Editor's note: Shortly after the enactment of Act 195, PSBA Executive Director Fred Heddinger prepared an analysis of the act that reviewed its strengths and weaknesses. That analysis is presented here, with some updating, so that the reader may compare the analysis with the subsequent experience that has occurred during the first years of the operation of the law.

Law will affect education

Act 195 has had a profound effect on Pennsylvania education. **The act was signed into law July 23, 1970, and became effective 90 days later, or October 21, 1970, except for the amnesty provision and Article V [sections 501, 502, and 503 dealing with the Labor Relations Board], which took effect immediately.** It is still too early to predict with certainty just how this new law will ultimately affect school children, teachers, school administrators at all levels, school boards, and school solicitors. However, based upon the experience thus far, one can safely say that no single piece of legislation has had the impact on public education in the commonwealth as that which resulted from Act 195. It is necessary to understand the strengths and weaknesses of the law if one is to operate successfully under it.

Keep agreements similar

Since the law applies to all public employes except for supervisors, management level personnel, and confidential employes, every school district (and public employer) in the state can expect to have collective bargaining agreements not only with teachers but with other personnel as

well. This means that every district will likely have more than one agreement and may very well have several. Thus, a first guideline is to endeavor to have nearly alike provisions in all agreements for a given school district (or public employer) insofar as this is possible considering the varying situations that exist within a school district. A PSBA study made at the time of enactment of Act 195, which was later corroborated by NEA data, indicated that about 75 percent of Pennsylvania school districts **did not have** any form of written agreement at that time. Continuing study of statewide bargaining practices and agreements reveals that virtually 100 percent of the school districts and other school units **now have** bargaining agreements.

Must work together

It was hoped that employe organizations and public employers would mutually work together under the act in a timely but orderly fashion with neither party endeavoring to gain unfair advantage through precipitous demands or actions. However, school boards and school administrators now recognize that there was great temptation for employe organizations to stampede employers into hasty, precipitous, and sometimes what later turned out to be ill-conceived agreements. Therefore, **the second guideline is to act deliberately, do not "lose your cool," and endeavor to establish mutually acceptable time schedules for developing satisfactory agreements which are reasonably expeditious for the employes' interests and still allow for adequate consideration for the general public interest. The third guideline is to seek competent labor counsel and experienced negotiating skills in developing appropriate terms for your bargaining agreement.** The first such agreement or contract negotiated is the most important, for it is this agreement which sets the stage for all subsequent agreements. A poorly constructed, or poorly negotiated, first agreement certainly spells increasing difficulty in later years. **Collective bargaining is no game for amateurs — employe groups will have the benefit of experienced, professional guidance in their negotiating efforts. School boards and other public employers should settle for no less in protecting the general public interest that they serve.**

As grievance arbitration cases began to demonstrate the problems that arose under some of the early, more poorly constructed contracts, school districts began to try to correct earlier mistakes in contract language and construction. This activity is now becoming a necessary and major part of the effort being put forth by school districts and other public employers.

Begin with these guidelines

Before looking at the strengths and weaknesses of Act 195, there were three guidelines set forth that are still applicable —

(1) Seek competent labor counsel and use experienced negotiating skills in arriving at agreements.

(2) Proceed deliberately, don't "lose your cool."

(3) Endeavor to have all agreements within a district as nearly alike in provisions as it is possible to so do.

Strengths of Act 195

The strengths of Act 195 from a school board (or public employer) point of view are these:

- Scope of mandatory bargaining is restricted so that mandated bargainable items are limited "to wage, hours and other terms and conditions of employment." (Section 701)
- Employers are not required to bargain on "the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, the organizational structures and selection and direction of personnel." (Section 702)
- Management level employes, confidential employes, and supervisors are excluded from the bargaining unit.
- Statutes enacted by the General Assembly (or provisions of municipal Home Rule Charters) prevail over bargaining agreement terms when there is a conflict. (Section 703)
- The employer's right to hire employes, or to discharge employes for cause, is preserved. (Section 706)
- The employer may recognize employe representatives for bargaining purposes or may call for a secret ballot election to determine the representative. (Sections 602 — 603)
- Bargaining elections may not be held more often than once every 12 months, "nor during the term of any lawful collective bargaining agreement." (Section 605)
- Strikes are prohibited until mediation and fact-finding are exhausted as outlined in the act. (Sections 801 — 802 — 1002)
- Arbitration of disputes or grievances over interpretation of terms of agreement is mandatory and binding on both parties. (Section 903)
- Costs of fact-finding and arbitration are shared by the parties. (Section 802-903)
- "No public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike." (Section 1006)
- Nonstriking employes who refuse to cross picket lines of employes on strike are considered on strike also. (Section 1101)
- Employes need not join employe organizations. (Section 401)

• Employers and employes alike are protected against being required "to agree to a proposal or — the making of a concession." (Section 701)

• Maintenance of membership by employes in an employe organization and dues deduction for the organization are negotiable and not mandatory. (Section 705)

• Employes are protected from coercion into joining employe organizations (Section 401) and may withdraw from an employe organization 15 days prior to the expiration of a bargaining agreement even though maintenance of membership may be a condition of such an agreement. (Section 301, paragraph 18)

• "No person who is member of the same local, state, national or international organization as the employe organization with which the public employer is bargaining — shall participate on behalf of the public employer in the collective bargaining processes." (Section 1801)

Weaknesses of Act 195

• Grandfather clause preserved, and made legal, collective bargaining agreements in effect on January 1, 1970, even though they had no legal status prior to enactment of the act. (Section 904)

• No clear guide or mandate is given the court to restrain or punish illegal acts under the law. (Sections 1007 — 1008 — 1009)

• Employes and employers may petition the court to reduce or suspend penalties assessed by the court. (Section 1010)

• Insufficient time was given to implement the act (Section 2301)

• Insufficient time is allowed for original negotiations leading to contract. Twenty-one days are too few before going to mediation. (Section 801)

• The act is silent regarding manner in which loss of pay is assured for "period of strike" by persons who work less than full time.

• Employe representatives in existence on January 1, 1970, "shall so continue without the requirement of an election and certification" even though the courts had previously held that there could be no exclusive bargaining representative under Pennsylvania law prior to this act. (Section 601)

• The act provides for the establishment of units for first level supervisors, even though employers are required only to "meet and discuss" with such units and are not required to bargain with such units. (Section 704)

• Membership dues deductions and maintenance of membership requirements may be included in agreements through mutual agreement between employer and employe representative. (Section 705)

• Individual employes, although guaranteed the right to present grievances personally, must also be accompanied by a bargaining representative if the representative so chooses. (Section 606)

4 important areas

Aside from the grievance procedures which are developed locally for use in local agreements, there are four areas of the act that largely determine future working relationships in a school district. **These areas are so important that you are urged to become highly familiar with the language of these sections of the act and to fully understand the intent and meaning of these sections.**

Section 701 defines mandated bargainable items and reads:

> Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Briefly, this section of the law requires public employers and public employes to reach a written collective bargaining agreement covering wages, hours to work, "and other terms and conditions of employment." This latter phrase is the one that can lead to great difficulty. Employe organizations invariably attempt to stretch this meaning as far as possible. Employers, on the other hand, endeavor to apply a strict interpretation to "other terms and conditions of employment," generally meaning fringe benefits and compensation related items. It is important to to realize that either party, employer or employe, can institute the proceedings which, under Section 701, mandate that the two parties reach a written collective bargaining agreement. **But it is extremely important to recognize that bargaining is mandated for only wages, hours of work, and other terms and conditions of employment.** For example, many courts have already ruled that assignment of teaching personnel and regulation of class size are not mandatory subjects for bargaining. School boards and school administrators need to ascertain that they do not, either inadvertently or deliberately, extend the scope of bargaining beyond that which is mandated.

Critical section

The scope of bargaining is likely the most critical area of a collective bargaining agreement, especially public sector contracts. Errors made in this area, which permit undue employe organization control, are almost impossible of subsequent adjustment or correction. Thus, what is

originally agreed upon as the scope of bargaining will in all probability prevail for the forseeable future, or will at least become the base from which employe organizations will endeavor to expand the scope of bargaining through future agreements.

Meet and discuss

The "meet and discuss" provisions of Act 195 are important to understand so that the difference between this process, and that of bargaining, may be recognized.

Section 702 enunciates the fact that employers are not required to bargain "over matters of inherent managerial policy," gives examples of items for which bargaining is not required, and goes on to point out that employers are required to "meet and discuss on policy matters affecting wages, hours, and terms and conditions of employment."

Public interest items

A willingness on the part of a public employer to bargain over items suggested in Section 702 amounts to abandonment of responsibility for the public interest. Employes are rightfully given the opportunity for "meet and discuss" sessions on policy that affects wages, hours and conditions of employment. School boards and school administrators should clearly understand the difference, however, between "bargaining" and "meet and discuss." Where bargaining is required, it is expected that the parties will reach an agreement that is mutually acceptable. Also, it should be realized that bargainable subjects will be subjected to the grievance process and to arbitration. Meet and discuss requires that the two parties meet and engage in some kind of meaningful dialogue; no agreement, or concurrence, is implied or necessarily expected.

Errors not protected

Section 702 does not, however, protect the employer from his own errors or mistakes if he should inadvertently, or deliberately, bargain over matters for which he is not required to bargain. **If the employer does bargain on matters of policy, and if bargaining on the applicable subject matter is not prohibited by law or by some court decision bearing on this subject, the employer will likely be constrained to the agreement reached through such bargaining.** Seldom will an employer gain back any prerogative given up through such bargaining. In the unlikely event that such an item is subsequently regained through future bargaining, it will be regained at an inordinately high price or other concession.

Dues deduction not required

Section 705 of the act reads:

> Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the

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latter, the payment of dues and assessments while members, may be the only requisite employment condition.

This means that employers are not necessarily required to deduct dues on behalf of employe organizations, nor are they required to accept a condition that employes must maintain their membership in the employe organization during the term of the agreement. During the bargaining process, employers can agree to either or both of these conditions if they so elect. It is presumed that if employers do accept either or both of these conditions, they will have received some substantial benefit as the result of agreement or such acceptance. This is a key issue with employe organizations — their future security often hinges almost entirely on obtaining such provisions. **Even though school boards and school administrators have in the past been highly accommodating in providing for employe organizations a dues deduction procedure when they were not obligated to do so, they should recognize that this is a high priority discretionary bargaining issue and should treat it accordingly. It should not be given away lightly.**

Saved agreements

One of the provisions of Act 195 saved agreements that were already in effect when the law was enacted.

Section 904 of the act reads:

> Any provision of any collective bargaining agreement in existence on January 1, 1970, which is inconsistent with any provision of this act but not otherwise illegal shall continue valid until the expiration of such contract. The parties to such agreements may continue voluntarily to bargain on any such items after the expiration date of any such agreement and for so long as these items remain in any future agreement.

In effect, **this provision of the law gave binding legal status to agreements in existence on January 1, 1970, even though they may be inconsistent with the act and even though they had no legal status until passage of the act.**

One escape route

School boards and school administrators who had such agreements were unfortunately caught up in the conditions of those agreements even though they could very well not be required to accept such conditions under the act if they had not previously agreed to such conditions. Therefore, **the only avenue of escape open in such cases is to ensure that undesirable, or prohibited or excluded, subjects are excluded from any future agreements, since carrying such conditions forward beyond the termination date of such existing agreements is a voluntary action based on mutual agreement to do so.**

"No-strike provisions"

The act permits strikes by employes after following the impasse procedures outlined in sections 801, 802, 803, 804, 806, and 807. Therefore, **if school boards are to minimize strikes they should make every effort to obtain a no-strike provision in their agreement, which prohibits strikes for any reason during the term of the agreement.** This does not, of course, eliminate the possibility of a strike after the expiration of an agreement. Such a provision does, however, ensure against the kind of strikes school districts had been primarily subjected to prior to the law — those that occur during the school term.

The employer has every right to exact this provision as a condition of the collective bargaining agreement. It is a provision which should be given high priority attention and consideration.

Timetable spelled out

Section 801 of the act spells out the timetable under which collective bargaining agreements must be reached.

School districts operating on the conventional fiscal year consider June 30 as the latest "budget submission date" under the act. If mediation has not been utilized by the parties no later than 150 days prior to the "budget submission date" (January 31, except for leap years), the parties — employer and employe representative — are required to call in the services of the Pennsylvania Bureau of Mediation.

21 days for negotiations

Negotiations obviously must then commence prior to January 31 (earlier than 150 days before budget submission date). Note, however, that only 21 days are provided for negotiations, under any event, before use of mediation is required. Thus, negotiations must begin January 10 if the parties are to afford themselves the 21 days provided for negotiations. There is nothing to preclude beginning negotiations prior to January 10. Interpreted literally, however, no matter when negotiations begin (prior to the fixed time schedule provided by the act) a period of only 21 days is provided for negotiations before utilizing mediation. In the interest of reaching an agreement on some orderly time schedule, an effort should be made to arrive at a pre-agreement, which would allow for something more than 21 days' negotiation. For example, a pre-agreement to begin negotiations on December 1 could allow for a more practical 62 day negotiating period (21 days prior to January 31 plus 41 days between December 1 and January 10).

The State Bureau of Mediation Services and PLRB have given assurances that, when the parties have mutually and voluntarily agreed to an earlier beginning date for negotiations, mediation will not be called for — and necessary — until the time schedule set forth in the act. In order words, the two parties may begin negotiations at an earlier point in time through mutual agreement without forcing automatic mediation 21 days after the beginning of negotiations.

Summary of guidelines

Eleven guidelines are therefore presented as representing guiding principles for working under Act 195. You are urged to understand these guidelines, and to share and discuss these guidelines with other members of your staff and management team so that common understanding will exist regarding principal concerns.

(1) Seek competent labor counsel and use experienced negotiating skills in arriving at agreements.

(2) Proceed deliberately; don't "lose your cool."

(3) Endeavor to have all agreements within a district as nearly alike in provisions as it is possible to so do.

(4) Carefully review and understand sections 701 and 702 of the act. Bargainable subjects should be strictly limited to those covered by Section 701, and should carefully avoid subjects included in the scope of Section 702.

(5) Since the law permits strikes after following certain procedures, every effort should be made to get into the agreement a clause that prohibits strikes for any reason during the term of the agreement.

(6) The employer is not required to provide dues deduction for employe organizations, nor is the employer required to provide some form of maintenance of membership by employes in the employe organization. Become familiar with the language and intent of sections 401 and 705.

(7) If the employer does agree to a maintenance of membership provision, which presumes that the employer has been successful in negotiating some added privilege or right in return for such an arrangement, the employer may wish to bring to the attention of employes their right to withdraw from membership in an employe organization 15 days prior to the expiration of a bargaining agreement as provided in Section 301, paragraph 18 of the act.

(8) The employer may wish to bring to the attention of employes the fact that they are not required to belong to an employe organization, as provided in Section 401 of the law.

(9) Employers must recognize that the law validates the force of any collective bargaining agreement that existed on January 1, 1970, but only **until the expiration of such contract**. Review and understand the provisions of Section 904 so that undersirable agreement conditions can be terminated at the expiration of an existing agreement.

(10) Review and understand the effect of sections 604 (2), 604 (5), and 704 so that management level employes, confidential employes, and supervisors are properly excluded from bargaining units, and so that professional and nonprofessional employes are not improperly included in the same bargaining unit. (Section 301 (2) defines "public employe" and excludes management level and confidential employes from the act).

(11) Mark the timetable of Section 801. For school districts operating on a fiscal year basis, June 30 is the latest budget submission date;

January 31 is the date on which mediation must be called for if no agreement had been reached; January 10 is the latest date by which negotiations must begin if the full 21 days of negotiations are to be available; and negotiations may begin any time before January 10, but if some preagreement is not reached regarding the use of such additional time, the parties are required to call for mediation after 21 days of negotiation no matter when the negotiation period began.

Strikes distressing

Careful contemplation of the early years' experiences has confirmed that those features of the law that were considered weaknesses have, indeed, proven to be weaknesses. Employe organizations have endeavored to exploit some of these weaknesses to their fullest advantage.

Philadelphia is the most notable example of the impact that the grandfather clause of Section 904 of the act has had on future operating experience. As was noted earlier, the beginning of the Philadelphia school strike that occurred in September 1972, and January-February 1973, flowed out of the initial collective bargaining agreement that was reached between the Philadelphia Federation of Teachers and the Philadelphia School District in the 1965-66 school year. Thus, although the terms of that agreement (and its successor agreements that existed prior to Act 195 becoming law) had no binding legal status prior to Act 195 becoming law, Section 904 of the act preserved those conditions, many of which had been subsequently found to be unrealistic and essentially unworkable.

In editorially commenting on the 1973 Philadelphia school strike (*Information Legislative Service*, Volume XI, No. 9, March 2, 1973), PSBA said:

> "The Philadelphia school strike has brought into clear focus the real issue that confronts Pennsylvania school officials and the general public. This issue is **not** a teachers' strike. Rather, the issue is one of fundamental public policy which goes to the very roots of American education and the functioning of representative government.
>
> "The issue is to what degree will education be used in American society, without regard for lawful processes, to impose the will of a small segment of that society on the public at large. The scorecard doesn't look very promising.
>
> • Long before Act 195, the Philadelphia teacher organization took advantage of an unprepared and uniformed but well meaning school management to force an ill-advised bargaining contract.
>
> • The enactment of Act 195, and its "limited right to strike" and grandfather clause, gave legal form to an ill-conceived agreement that had no previous legal status.
>
> • Much before the most recent strike it became obvious that Philadelphia school officials had to seek relief from unrealistic contract constraints.

• Not unexpectedly, the Philadephia teachers' organization attempted to retain unreal contract constraints and at the same time impose a substantially higher labor cost on a school district already confronted with a multi-million-dollar deficit.

• Leadership of Philadelphia teachers struck the school district to enforce its demands. When Judge D. Donald Jamieson properly enjoined the strike under the provisions of Act 195, teacher leadership showed that it would not respect the new law that it sought, any more than it respected the previous no-strike law. The strike continued.

• Confronted with complete and utter disregard for lawful procedures, Judge Jamieson had no real choice but to move to uphold the court's responsibility to see that lawful processes are used on behalf of the general public welfare. Fines and sentences were imposed.

• Some segments of organized labor joined with teacher unionists in harassing students, parents, working teachers, and school officials.

• A general strike of Philadelphia public services was organized by teacher unionists and other segments of organized labor in order to force upon the public a settlement that the teacher union could not achieve through bargaining and other lawful processes.

• Not surprisingly, but nonetheless distressingly, unionized professors and teachers at Temple University — a state-supported institution of higher learning — announced their intention of supporting the planned general strike in Philadelphia. Temple facilities were reportedly used to help plan the general strike. Not only was the teachers' strike unlawful, but the planned general strike was unlawful and more offensive since secondary strikes are prohibited by both Act 195 and federal law.

"It may never be known as to whether or not a general strike would have taken place in Philadelphia. Certainly some of the labor groups had made such a positive commitment that they would have found it very difficult to do other than join in a general strike. Equally certain, many of the labor groups recognized the inherent danger to organized labor generally that such a general strike would likely have produced. Many of these would not have participated.

"Teachers in the public schools, and professors and teachers at the college level, both are now caught up in being a part of the action of attempting to dictate under what conditions a public service will be provided. Legislative and state government bodies, through the manner in which Act 195 is being implemented and administered, have **almost** delivered the control of public services to the rather natural personal interests of the persons engaged in these services.

Such a stance gravely threatens the public character of such public services. This is especially true of education where, if the character of education is to be primarily shaped by the personal interests of professors and teachers at the college level and the personal interests of teachers at the elementary and secondary level, the general public may increasingly seek other means to accomplish their educational objectives. Public schools have been designed to fulfill a public purpose. Where there is a conflict between public interest and private interests, either public schools will continue to reflect a public interest purpose or some other alternative will be sought."

Law lacks specific and mandatory direction

Even more troublesome than the effects of Section 904 of the act during its early implementation were the cited weaknesses which arose under the lack of specificity of sections 1007-1008-1009 of the act. The lack of specific and mandatory direction to the courts as to penalties to be imposed for infractions of the law served to encourage the courts to yield to various pressure groups so that the anticipated deterrents to illegal acts by employe groups became virtually nonexistent and almost totally ineffective.

Said *The Pittsburgh Press* in an editorial that appeared in the January 16, 1973, issue of *The Press*:

> The school teachers in Philadelphia are making it clear how the state's Public Employe Relations Law can be turned into a joke. The teachers there are defying a court order to stop their strike, which for the second time in four months had disrupted the education of 280,000 students. And they're getting away with it. The court order was issued last Thursday by a Common Pleas judge in Philadelphia. Instead of obeying it, the teachers appealed to Commonwealth Court. That court refused to lift the injunction. But the teachers still refuse to obey.
>
> This is a brazen demonstration of contempt. But nobody — neither the defiant teachers nor the defiant union leaders nor the defiant union itself — is being penalized. The reason: Nobody has the guts to carry out the law. The school officials in Philadelphia went to court to seek an unjunction. They got it. Now they don't want to ask the court to enforce it. And the court seems reluctant to move on its own initiative. What a shameful charade!
>
> The school officials say they don't want to make 'martyrs' of the union officials by having them jailed for contempt. Then why was an injunction sought in the first place? Actually, the most practical penalty in a situation of this sort might be a heavy fine on the union treasury — assessed on a daily basis. This would avoid the necessity to jail anyone. As it is, the Philadelphia Local of the American Federation of Teachers is making a mockery of the law, the courts, the Philadelphia school board and the State Legislature.

Somehow, somewhere, some time soon, somebody has got to teach teachers that when they break the law they must suffer the consequences just like anyone else. Otherwise, there's no sense for parents to pay teachers to teach their children how to behave in a democratic society.

Impasse shortcomings

The shortcomings of Section 801 of the act brought about two conditions which materially hurt the effectiveness of Act 195; overuse of the impasse procedures established under the law; because of overuse of the impasse procedures, virtual disregard for the various steps in the impasse procedure and their intended effect on helping the two parties achieve agreement. The 21 days provided in Section 801 of the act for negotiation of a contract is unrealistically short. Experience has so demonstrated. Thus, a far too large percentage of negotiations has been forced to go to the impasse procedures of the law. The manner in which the law has been administered by the Pennsylvania Department of Labor and Industry — with separation of reporting responsibilities between the Pennsylvania Bureau of Mediation Services and the Pennsylvania Labor Relations Board — has greatly contributed to the ineffectiveness which the unrealistically short negotiations period has brought about.

The framers of the act expected that all of the various impasse procedures would be thoroughly and effectively utilized by the two parties before the public would be subjected to strikes. Quite a different result occurred. Under the structure of the act, and under the manner in which the Pennsylvania Department of Labor and Industry has been structured, the Bureau of Mediation Services and the labor board are separate entities, performing separate and discreet functions. Although these two activities in theory and on paper ultimately report through the secretary of labor and industry — and although these two separate entities have apparently established good working rapport between themselves — the Bureau of Mediation Services and the Labor Board do not in fact operate under a single direction. Thus, the administration of the law, in this regard, has suffered from the lack of a single, central direction.

The Bureau of Mediation Services has been confronted with an impossible load of impasse situations under Section 801 of the act because of the short time period allowed for negotiations. Despite good intent and competent personnel (largely schooled, however, under private labor practices and not generally familiar with public sector practices), the bureau has been unable to provide either the quantity or quality of mediation service which could have been provided had not this overuse of mediation resulted. Flowing out of the separation of responsibilities of the bureau and the labor board, the bureau's findings and actions were not tied directly to the actions of the labor board. Thus, the benefits obtained from the mediation process have been considerably less than they should have been had not the unrealistic short negotiations period existed and had the actions of the bureau and the labor board been closely tied together as complementary functions under a single overall direction.

The fact-finding process under Section 802 of the act, which is the second step in impasse resolution, was expected by the framers of the act to be highly effective in bringing about bargaining agreements without undue recourse to public employe strikes. In practice, a quite different result has occurred. The authors of the act expected that fact-finding would flow out of the impasse procedures in such a fashion that effective fact-finding would greatly reduce the likelihood of strikes and would be a necessary prerequisite to the so-called "limited right to strike." However, the decision as to whether or not a fact-finding panel (either one or three) would be established is a function of the labor board, not the Bureau of Mediation Service, and even though the bureau may recommend fact-finding, the board — under a separate direction — is not obligated to respect this recommendation nor provide a fact-finding panel.

Again, because of the overuse of the overall impasse procedures where, consequently, relatively few impasses have been resolved through mediation, far too many impasses have been left for which to consider fact-finding. Thus, the potential usefulness of fact-finding has been gravely affected, materially influencing the number of strikes that have occurred. **Most of the strikes that occurred during the first five years of the act were illegal strikes since they failed to satisfy the impasse procedures outlined in the act.** Whereas it was expected that use of strikes under Act 195 would be the highly exceptional method of resolving impasses, it became a commonly used method whereby public employe bargaining agents attempted to force upon public employers their demands.

Worst Problem

The greatest shortcoming of Act 195 during the first five years of implementation was the fact that the law did not spell out how a loss of pay would be certain for those persons who work less than full time. This factor, coupled with the manner in which the Department of Education has administered the subsidy laws under the Public School Code, served as the single most significant factor in bringing about strikes in the public schools. Initially, the Department of Education attempted to assess two kinds of financial penalties when a school district experienced a strike. The first penalty was a withholding of subsidy in the year following the strike that was directly related to the number of days on strike in the prior year. Most school districts were prepared to accept this kind of penalty since it was offset — at least to some degree — by the salaries that were not paid during the days of the strike.

In addition, however, the department attempted to apply a second year penalty that most school districts could not withstand. This would have come about through manipulation of attendance data — a procedure not provided for in law, and one that was eventually abandoned by the department. Thus, at current writing the financial penalty tied to a strike is limited to subsidy payments made in the year immediately following the strike. (The manner in which this penalty shall be calculated was still

under review and discussion by Department of Education officials at the time of updating of this publication.)

Several court cases dealing with the issue of makeup days that could result from days lost because of a strike consistently ruled that makeup days were not necessarily required. These cases — Ringgold School District *School Law Information Exchange*, Vol. XII, No. 46 (July 23, 1971); Northern Cambria *School Law Information Exchange*, Vol. X, No. 92 (August 28, 1973); West Middlesex School District *School Law Information Exchange*, Vol. XI, No. 82 (September 24, 1974); Philadelphia School District *School Law Information Exchange*, Vol. X, No. 23 (April 11, 1973); and Leechburg School District *School Law Information Exchange*, Vol. XII, No. 60 (August 1, 1975) — did not satisfy the Department of Education in its desire to force makeup days. In August 1975, the department issued a further directive to local school districts that said: "By statute, the attorneys in the legal division render binding legal advice to the Department of Education, boards, commissions and officers. **The informal advice of the legal division should be considered advisory by school districts and intermediate units, but should also be accorded proper deference and weight in the making of local decisions.**" (Emphasis added.) This directive was issued in the face of the following circumstances regarding the number of school districts that did not have 180 days of school during the school year affected by a strike, as printed in the *ILS*, Vol. XIV, No. 3 (January 16, 1976):

> A review of data accumulated since the 1969-70 school year reveals some interesting facts concerning the 180-day school year issue. During the school year prior to the passage of Act 195, two school districts completed less than 180 days of school. One had 168 days, the other 176 days. Here is a breakdown of school districts that completed less than 180 days by school year.

SUMMARY 1969-70 through 1974-75

Days Completed			
140	1 district	170	4 districts
151	1 district	171	4 districts
157	1 district	172	1 district
160	1 district	173	1 district
162	1 district	174	1 district
163	1 district	175	4 districts
164	2 districts	176	3 districts
166	3 districts	177	3 districts
167	4 districts	178	2 districts
168	3 districts	179	5 districts
169	4 districts		Total 50

As of the first part of December, the state's public schools had suffered 75 school strikes in the 1975-76 school year, and a total of 301 such strikes since the enactment of Act 195 in 1970. For the five year period prior to the law, an estimated 23 school strikes had occurred.

Another aspect of the 180-day rule relates to the provisions of Act 80 (1969) whereby school districts are not required to have 180 days of school in the event that they have 990 hours of programs at the secondary level or 900 hours of program at the elementary level. In the school year 1974-1975 more than 100 school districts routinely received approval for programs of less than 180 days where the minimum hours were observed.

Employe unions knew in advance of a strike that the state would exercise enough leverage in behalf of the employe union to almost assure that the school district would attempt to find some way to make up the days that had been lost by strike. Thus, with reasonable assurance that every effort would be made to make up lost time, school employe groups — especially teacher unions — could embark upon strikes with good anticipation that they would suffer no loss in pay despite the stipulation in Section 1006 of the act that: "No public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike." **This factor, above all else, has helped to produce the strikes that confronted Pennsylvania's public schools.**

Adequacy of guidelines

The 11 guidelines set forth earlier in this section have been found to be basic to successful operation under Act 195. To these, still another should be added for the benefit of all public employers. **Don't operate in a vacuum. Learn what other public employers are doing.** Share information with other employers and with other employer organizations, where appropriate. The first years of operation under the law have dramatically illustrated the necessity of being well informed. Don't guess!

Chapter III

Implementation of Act 195

Collective bargaining is a dynamic, fluid and constantly changing process. During the first years of the operation of Act 195, PSBA has conducted a continuing series of regional meetings throughout the state where school board members, school administrators at all levels, school solicitors, school board secretaries and business officials met together to discuss and review what was occurring under Act 195. These meetings were held in cooperation with the Pennsylvania Association of School Administrators (PASA) and other employer interest groups such as the Association of School Board Secretaries, the Association of School Board Solicitors, the Pennsylvania Association of Secondary School Principals (PAESP), and the Pennsylvania Association of Elementary School Principals (PAESP). Out of these meetings came the firm conviction that the future will require continuing such meetings and PSBA, in cooperation with other employer interest groups, continues to conduct regional and statewide meetings and workshops dealing with the constantly changing aspects of collective bargaining and related issues.

In addition to this guidebook, other PSBA publications provide timely and permanent recitals of important school law cases and Pennsylvania Labor Board and other agency rulings that affect collective bargaining issues. The combination of *Negotiation Guidelines, Public Sector Arbitration, and School Law Information Exchange* gives school management personnel an important resource that makes a rather difficult job somewhat easier to manage. Every person charged with functioning, in some way, in the bargaining process on behalf of school employers should use these important references in their bargaining activities. (See page 223 for further information).

PSBA contract guidelines

Collective bargaining agreements are technical, legally binding contracts that set forth the specific circumstances that govern the **labor relations** working relationship between the employer and the bargaining unit employes covered by the agreement. The employer typically retains all rights that are not constrained, or surrendered, through the provision of the collective bargaining agreement. Thus, the need for concise and specific language should be obvious. **Extraneous provisions and language should be carefully avoided.**

Suggested form of bargaining agreement

Shortly after the enactment of Act 195, PSBA issued some suggested guidelines that school districts and other public employers could use in structuring an adequate and acceptable local collective bargaining agreement. These guidelines have proven to be fundamentally sound and contain all of the necessary elements of a satisfactory bargaining agreement. They are included here for continuing guidance.

I. Recognition

The (*name of employe organization*), hereinafter called the bargaining agent, is hereby recognized by the (*name of school district*), hereinafter called the employer, as the bargaining agent for (*name and description of bargaining unit*), hereinafter called the bargaining unit, and for the employes properly included in the bargaining unit under the conditions of Pennsylvania law (Act 195) providing for collective bargaining for public employes.

Both parties aver that this agreement sets forth the terms and conditions to which each party agrees to be bound, and that such agreement has been reached voluntarily without undue or unlawful coercion or force by either party.

II. Terms of Agreement

The term of this agreement shall begin on (*beginning date*) and shall continue in full force and effect until (*ending date*), or until such later date as the two parties may hereinafter agree is to be the extended ending date. Any such extended date shall be evidenced by an amendment to this agreement, to which amendment both parties shall signify their approval by affixing their signatures thereto.

III. No Strike — No Lock-Out Provision

Both parties agree to faithfully abide by the provisions of the Pennsylvania Public Employe Bargaining Law, Act 195. As a condition of the various provisions of this agreement to which the parties have agreed, the bargaining agent pledges that members of the bargaining unit will not engage in a strike (as that term is defined in Act 195) during the term of

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this agreement, and the employer pledges that it will not conduct, or cause to be conducted, a lock-out during the term of this agreement. Further, the bargaining agent pledges that it will take such positive action as may be necessary to ensure bargaining unit compliance with this no-strike pledge.

IV. Wages And Salary Provisions

The parties agree that wages and salaries to be effected by this agreement are accurately reflected in Appendix A, made part of this agreement, and that the schedule of wages and salaries set forth in Appendix A shall be the schedule which shall remain in force for the period of this agreement.

In the event that the term of this agreement shall be extended as provided in Section II above, and in the event that such mutually agreed-upon changes result as a condition of such an extension, then a revised Appendix A shall be executed by the parties and attached to and made part of this agreement. (Appendix A should set forth the schedule of basic wages or salaries applicable to the bargaining unit covered by the contract for the period of the contract. See comments on page 31).

V. Other Employe Benefits

The parties agree that other employe benefits to be provided under this agreement are accurately reflected in Appendix B attached to and made part of this agreement. (Appendix B should set forth the specific benefits to be provided for the bargaining unit for the period of the contract. Care should be exercised to insure that the employer retains the right to choose the carrier for various insurance benefits — in other words, the level of benefit should be bargained, and stated in the contract, but the employer should be free to choose the most inexpensive, or most convenient way of furnishing the benefit so bargained. Also, Appendix B should carry an explicit provision that, in essence, says "these benefits shall expire with the expiration of the contract unless the parties mutually agree prior to the expiration date that an extension shall be granted for some stated period of time."

VI. Hours Of Work And Other Conditions Of Employment

The parties agree that hours of work and other conditions of employment are accurately reflected in Appendix C attached to this agreement.

Changes in hours of work or other conditions of employment, to which the parties may agree conditioned upon a change in the term of this agreement, as provided in Section II, shall be evidenced by a revised Appendix C which shall be executed by the parties and attached hereto and made part of this agreement. (Appendix C should set forth the basic hours of work required from bargaining unit personnel for the period of the contract. See comments page 31.)

VII. Grievance Procedure

It is in the interest of the general public, and in the interest of the school children that both employer and employes serve, that grievances be reconciled and disposed of as expeditiously as is possible.

The parties agree that grievances which arise out of the application or interpretation of this agreement, shall be resolved in accordance with the grievance procedure described in Appendix D attached hereto and made part of this agreement. (Appendix D should set forth the grievance procedure to be used by the parties in resolving differences that arise as to the understanding and application of the contract to bargaining unit personnel. See suggested procedure and forms on page 35.)

VIII. Job Security And Job Progression

The Pennsylvania School Code includes certain job security provisions, certification, and other regulatory provisions associated with various classes of employes. The Pennsylvania Local Agency Law, Act 353 (1968), sets forth certain other conditions that must be met by public employers when dealing with employes who may not be covered by the forms of protection provided in the School Code. The parties hereby aver that such provisions of the School Code and the Local Agency Law represent their complete agreement on this subject and that said provisions shall govern the manner in which the job security, job progression, and reduction in force practices shall be effected with respect to members of the bargaining unit.

In the event that additional provisions not inconsistent or in conflict with those enumerated in the School Code shall be agreed upon by the parties with respect to job security, job progression, and reduction in force, such provisions shall be made a part of Appendix E which shall be made part of this agreement.

(Appendix E should set forth any seniority considerations, qualification considerations, and other factors that may be considered in addition to the School Code and Local Agency Law provisions already referenced. Care should be exercised to ensure that the provisions of the School Code and the Local Agency Law are not inadvertantly subjected to the arbitration process that flows out of the grievance procedure and Section 903 of the act. Appropriate seniority provisions can be an exceedingly complex issue — competent advice on this issue is strongly recommended.)

IX. Waivers

The parties agree that all negotiable items have been discussed during the negotiations leading to this agreement, and that no additional negotiations on this agreement will be conducted on any item, whether contained herein or not, during the life of this agreement.

(Unless a statement like this is included in the contract there is a good possibility that attempts may be made to force additional bargaining on

items not included in the agreement during the life of the agreement. This should not be allowed to happen.)

X. Effective Date and Signature

(This section of the agreement should establish the date of signatures by the parties, and the titles and names of organizations which the signatures represent).

APPENDIX A — Wage And Salary Provisions

(This appendix should set forth the wage and salary provisions of the local school district upon which agreement is reached. Note that Section 604 (2) of the act prohibits a bargaining unit including both professional and nonprofessional employes "unless a majority of such professional employes vote for inclusion in such unit.")

APPENDIX B — Other Employe Benefits

(This appendix should recite in specific detail the fringe benefits agreed upon. See comments page 29.)

APPENDIX C — Hours Of Work And Other Conditions Of Employment

(This appendix should recite the specific hours of work expected from bargaining unit personnel. This appendix is the key to future working relationships and should be restrained to simple language which enumerates only those things which are in truth hours of work and other conditions of employment — bargainable items — and should carefully avoid items of a policy nature for which bargaining is not required. Care must be taken here not to enumerate, or agree to, conditions which restrain the school board and administration from making whatever assignment of personnel is necessary to operate the educational program of the district effectively.)

APPENDIX D — Grievance Procedure

The parties to this agreement agree that an orderly and expeditious resolution of grievances arising out of the interpretation of the terms of this agreement shall provide for a five (5) step process as suggested on the following pages.

Grievance procedure

Earlier editions of this publication have suggested the importance of the grievance procedure in a collective bargaining agreement. Experience to date has amply demonstrated that this focus on the grievance procedure is entirely justified and proper. One needs only to review a fair sample of school district arbitration cases (see *PSBA Public Sector Arbitration*) to fully understand the significance and impact of grievances, and arbitration, and to see that the contract grievance procedure is second to none in importance.

The grievance procedure has been said to be the process by which life is given to the contract terms, or language. Said another way, what happens in the grievance procedure is the process by which the two parties demonstrate what is meant by the contract language that was adopted in the contract. Section 903 of the act requires that "disputes or grievances arising out of the interpretation of the provision of a collective bargaining agreement" must be resolved through binding arbitration. Thus, the parties to an agreement must accept the interpretation of a third party (arbitrator) as to what the parties meant when they agreed upon certain contract language whenever the parties themselves are unable to agree as to how the contract terms apply to a given set of circumstances.

It should be obvious, then, that the contract language should be as explicit as it can be made. Ambiguities should be avoided, thus avoiding opportunities for more than one meaning and thereby foreclosing opportunities for arbitration decisions that may be contrary to the original intent of the contract.

The grievance process — and arbitration — should not be allowed to become an extension of the original bargaining process, whereby things that were not obtained at the bargaining table are made available through the manner in which the grievance procedure is structured and administered. An otherwise excellent collective bargaining agreement can be done in by a poor grievance definition procedure. It should be recognized that what happens at the first step of the grievance procedure, and at subsequent steps, is critical to the integrity of the collective bargaining agreement and the purpose of its language. The grievance process is a part of the overall collective bargaining process (see *School Law Information Exchange*, Vol. X, No. 50 where the Lancaster County Court so ruled in a decision reversing PLRB involving the Eastern Lancaster County School District. Although the Commonwealth Court later reversed the Lancaster court on the effect on first level supervisors, the determination regarding grievance procedures being a part of the collective bargaining process was hereafter accepted by PLRB.) As such the grievance process requires the same kind of priority attention by school management personnel as does the negotiation of original contract language.

Some believe that because no grievances reach the second or higher levels that everything is in good order and under control. **Just the reverse may be true!** If school management personnel responsible for adjusting grievances at the first level capitulate at that level on each grievance presented, it is true that no grievances will then reach a higher level — the superintendent, or the school board, or arbitration. However, the intent of the bargaining agreement may be completely emasculated and thoroughly subverted by such actions. **So what happens during the grievance procedure is equally as critical as the original contract language.** Too, this is the underlying reason why the conflict of interest Section 1801 (a) of the act requires that persons representing the employer in such procedures shall not be members of "the same local,

state, national or international organization as the employe organization with which the public employer is bargaining."

As can be seen, the possibility exists that improper grievance adjustment inconsistent with the contract may occur at the first or lower levels of the grievance procedure. In order to ensure that this doesn't happen, a procedure should be established that requires periodic review of all grievances that have been initiated against a particular contract covering a specific bargaining unit. Such a procedure should require accounting for all grievance forms that have been acted upon by a given first level supervisor or other supervisor who represents the first level in the grievance process. Such a procedure also provides the basis for periodic review with all supervisors functioning at the first level of the grievance process so that there is consistency in how a given contract provision is interpreted and applied. **This helps avoid the setting of bad, or improper, precedents — precedents that "can do in" a carefully drawn contract.**

A grievance is not meant to be an idle or frivolous complaint by an employe that he or she doesn't like what has happened. Rather, a grievance is intended to be a claimed technical violation of the terms of the contract, or an alleged misinterpretation of the contract. If the grievant, or the employe representative for the grievant, cannot cite the contract provision or provisions that have been violated by the employer, the chances are that there is no basis for a grievance and the issue should go no further than action at the initial step.

With these various considerations as background, the importance of a proper grievance definition and procedure can be readily seen.

The following is suggested as an appropriate grievance definition and procedure to be included in Appendix D of a typical contract.

Grievance Definition — a grievance is an alleged violation of the terms and conditions of this agreement, or is an alleged misinterpretation or misapplication of one or more sections of the language of this agreement.

Step I — Person, or persons, initiating the alleged grievance shall present the grievance, in writing and on a form provided by the employer, to the building principal or other first level supervisor within (*time limit*) days after its occurrence.

The building principal or other first level supervisor shall reply to the grievance within (*time limit*) days after initial presentation of the grievance.

Step II — If the action in Step I above fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred to the assistant superintendent or personnel director (or other designated person) within (*time limit*) days after a decision has been rendered in Step I.

The Assistant Superintendent or Personnel Director shall reply to the grievance within (*time limit*) days after presentation of the grievance at this step.

Step III — If the action in Step II above fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred to the superintendent within (*time limit*) days after a decision has been rendered in Step II.

The Superintendent shall reply to the grievance within (*time limit*) days after presentation of the grievance at this step.

Step IV — If the action in Step III above fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred to the board of education within (*time limit*) days after a decision has been rendered in Step III.

The board of education shall reply to the grievance within (*time limit*) days after presentation of the grievance to the Board.

Note: Some school districts, especially larger districts, may choose to have grievances go directly to arbitration from the decision of the superintendent or the superintendent's designee. If this occurs, the school board should establish some procedure whereby it is informed as to the nature of grievances going to arbitration, just as it is informed about issues going to litigation.

Step V — If the action in Step IV above fails to resolve the grievance to the satisafaction of the affected parties, the grievance shall be referred to binding arbitration as provided in Section 903 of the act within (*time limit*) days after final decision by the board of education. The arbitrator, in making a decision as to the merits of the grievance, shall not add to, or modify in any way, the terms and conditions of the contract under which the grievance was instituted.

Forms for Suggested
Possible Grievance Procedure

pages-35-37

SUGGESTED POSSIBLE GRIEVANCE PROCEDURE

For Use in Disposing of Claims Related to Interpretation of Terms of Agreement

Steps	Administration or Board Representation	Grievant or Employe Organization Representation	Time Limits
I.	Principal or other first level supervisor	Grievant, with or without building representative of employe organization	Appropriate time limits on both parties for answer to grievance and appeal decision
II.	Asst. Superintendent of Personnel Director (with Principal or others as desired)	Grievant and a representative of employe organization	Appropriate time limits on both parties for answer to grievance and appeal decision
III.	Superintendent (with Principal or others as desired)	Grievant and representative of employe organization	Appropriate time limits on both parties for answer to grievance and appeal decision
IV.	Final decision by the Board of Education except when the parties to such an agreement are required by Section 903 of Act 195 to go to binding arbitration for resolution of such a grievance.		Recommendation or decision within _____ (appropriate specific number) of days
V.	Final decision by arbitrator on those issues subject to arbitration as defined in Section 903 of the Act. Both parties bound to decision except where enabling legislative action is required, in which it is binding only if such legislation is enacted as provided in Section 901 of the Act. (NOTE: An appropriate limit should be placed on time during which appeal may be taken to binding arbitration.)		

GRIEVANCE REPORT

Grievance Number (Preprint Number) _____

Date _____

Grievance Initiated By: _____

Bargaining Unit: _____

Grievant Work Place: _____

First Level Supervisor: _____

Date and Nature of Alleged Grievance: _____

_____

Grievance Relates to Contract Section (s): _____

_____

Action Desired: _____

_____

Signature _____ Date: _____

Reviewed With First Level Supervisor (Date) _____

Disposition By First Level Supervisor _____

_____

Signature _____

GRIEVANCE REPORT
(Second Sheet)

Grievance Number (Add Appropriate Number)

Date _____

Step_____Grievance Action Initiated (Date)_____

Name and Title of Level Supervisor responsible for action

_____

Bargaining Unit Representative Statement _____

_____

Signature _____ Date _____

Disposition: _____

_____

Signature _____ Date _____

Further Action (If Any) _____

_____

Signature _____ Date _____

Signature _____ Date _____

The importance of contract language

Earlier editions of this publication noted that one of the earliest lessons that needed to be learned about the set of labor relations ground rules brought into being with the act "**was the fact that contract language is all-important.**" More than five years of experience under the act, and more than 200 arbitration decisions and dozens of court decisions, have amply demonstrated this to be the case.

Collective bargaining agreements are not documents for the overall operation, or management, of the mission of the employer. Rather, they are documents that set forth the labor relations working relationship between the public employer and the bargaining agent that represents the public employes in a given bargaining unit. As such, they should consider these principles.

- Statements of philosophy, and board and administrative policy, have no place in a bargaining agreement. The agreement should deal only with substantive matters which the two parties agree are appropriate for bargaining and which they agree will be resolved on a joint determination basis. Remember that such issues will be subject to grievance and arbitration.
- Bargaining agreements should not mix together items of a "meet and discuss" nature with items on which bargaining will take place. Make separate provisions for "meet and discuss" items.
- Where the School Code contains explicit provisions for dealing with various aspects of employment conditions, clauses should not be considered which would attempt to contravene the School Code in what may be extra-legal fashion.
- Generalized statements should be avoided. Phrases should have well understood and precisely defined meanings. Do not reference "codes of ethics" or other secondary documents. Where necessary, repeat the desired language from such documents if it is to be included in the agreement. The agreement should stand on its own.
- Precise language should be used to describe fringe benefit programs. Carriers of insurance, for example, are not negotiable. The form and amount of insurance is negotiable.

The overpowering importance of contract language becomes increasingly evident as more experience is obtained in handling grievances and arbitration that flows out of grievances. These general guides are suggested for the proper structuring of collective bargaining agreements.

1. Include only essential items and the detail necessary to properly describe these essential items — nothing more. Do not philosophize.
2. In determining the essential items to be included, refer to Section 701 of Act 195 and identify those items of current policy that fall within the scope of Section 701. (Note: If there are items that fall within the definition of Section 702, then they do not fall under the category of Section 701. Exclude those items.)

3. If the items to be included go beyond the items identified in the suggested PSBA model guidelines, (see pages 28) ask these questions regarding each such item:

   (a) Why is it necessary to include this item in the agreement?

   (b) Is this an item which carries a precise dollar cost applicable to an employe or group of employes?

   (c) If it does not carry a dollar cost, then is it an item that properly belongs in the scope of Section 702 of the act? If so, should it not be deleted and considered a "meet and discuss" item rather than a bargainable item. (See also discussion page 71).

4. Include in the agreement only items on which you expect to bargain and reach an agreement — do not include meet and discuss items or items that will not be subjected to arbitration.

5. Include in all agreements a waiver or zipper clause and a no-strike clause.

6. Be certain that the contract, and the grievance procedure associated with the contract, **limits binding arbitration to that required by the law**. Refer to Section 903, first sentence.

7. Keep bargaining unit position descriptions out of the collective bargaining agreement and insulated from the greivance procedure of the agreement. "Meet and discuss" procedures may be appropriate relative to bargaining unit job descriptions. Bargaining about the level of pay for a position, or class of position, after the position description has been established may be appropriate, but bargaining over the position description itself is not.

8. Make certain that current position descriptions are maintained by the school district for all nonbargaining unit positions including first level supervisors, management level employes, and confidential employes. Although these are not controlled in any way by the agreement, it is necessary that clear levels of authority for grievance action exist.

The makeup of a bargaining unit

Who is in the unit?

The makeup of a bargaining unit is not a negotiable subject. The employer, by virtue of the manner in which responsibilities and authority are assigned throughout the employe body, with which he works, determines what positions are supervisory or confidential. The employer must have a sufficient body of supervisory and management level personnel to properly discharge the public service function with which he is charged. While the bargaining unit representative may challenge this determination by appeal to the Pennsylvania Labor Relations Board, in general the labor board will not upset any such employer determination if there is, indeed, an effective supervisory or confidential role performed by excluded personnel.

According to the school laws of Pennsylvania, the school district is assigned the responsibility for establishing the functions of its employes and this is accomplished by having job descriptions prepared for each employe. As a result, the school district shall clearly identify its supervisory and nonsupervisory personnel independently of the employe unit.

If it is impossible to reach agreement on the definition of the bargaining unit, then the employe organization may proceed on its own for certification to the Pennsylvania Labor Relations Board by use of Form PERA 603 (c)-4. The employer will then be given an opportunity at a designated hearing to present its position as to the proper makeup of the bargaining unit.

Sufficient rulings have already been made by the labor board to clearly illustrate this principle. If an employe performs an effective supervisory function, or functions as a confidential employe for any part of that person's work effort, that employe is properly excluded from the bargaining unit. **It is especially important that this be understood and observed when considering an appropriate bargaining unit for both professional and classified employes**, because the employer must have a sufficient body of excluded personnel to effectively manage and direct the work effort of bargaining unit personnel.

How to tell

Sections 301 (6) and (13) of Act 195 define supervisors and confidential employes. Section 301 (6) says:

> (6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

Section 301 (13) says:

> (13) "Confidential employe" shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

Again, the final determination as to who may be excluded from the bargaining unit rests with how the employer has assigned the above noted authority and responsibility within the employe body. Generally, a supervisor is a supervisor if he performs **any** of the functions identified above. The percentage of time spent in supervisory activities is not usually a significant factor in such determination.

Similarly, a confidential employe is such wherever the functions described above are performed. Usually this means that the following will be excluded: secretary to the superintendent, secretary to the business manager or assistant superintendent for business or personnel affairs, secretary to the personnel administrator, secretaries to the building principals who are charged with personnel direction and administration for their buildings, and secretary to the building and grounds supervisor (by whatever title) who is charged with personnel direction and administration of support personnel. This list is not all inclusive and other positions may also be excluded depending upon the organization that exists within a given school district.

Keep in mind that a given position may be removed from the bargaining unit any time that the work assignment, or position description, is changed so that a supervisory or confidential employe position does, in fact, exist. This means that even though a given position may have been included, either through error or inadvertent action, in the bargaining unit, that position may be removed from the bargaining unit by the employer upon his determination that the position is, in fact, supervisory or that of a confidential employe. Such actions are naturally subject to challenge by the bargaining unit representative and final determination by the labor board. **But, if the employer has properly based his determination upon the elements of the position as assigned and utilized**, there is every likelihood the employer's action will be sustained.

Section 301 (19) of the act says: " 'First level of supervision' and 'first level supervisor' means the lowest level at which an employe functions as a supervisor." Such first level supervisors may not be a part of a bargaining unit but may form separate "meet and discuss" units comprised only of first level supervisors. It must be remembered that "first level supervisors" are still supervisors and as such should properly represent the interests of the employer.

Section 601 of the act and the Institution of Representation Proceedings section of the Pennsylvania Labor Relations Board Rules and Regulations, both of which appear in other parts of this guidebook, set forth the procedures and conditions which must be met in order to have a properly certified bargaining unit and bargaining agent.

Titles are obviously important to the affected individuals and should carry some indication as to the nature of the job to be performed and where that position fits in the hierarchical structure of all positions established by the employer. Titles such as "head teacher", "assistants to the principal", "coordinator", or "supervisor" may indicate that such positions are supervisory positions under the act and will be excluded from the bargaining unit. It is the job function, however, not the title, that is significant and controlling — when position descriptions are established for positions that are to be excluded from the bargaining unit, this must be kept in mind. (See *Negotiation Guidelines* 5-18-71-18 for discussion of such examples.)

The bargaining unit representative

Employers are well advised to stand clear of determination by the affected employes as to whom they wish to have represent them as a bargaining agent, if any. This is a choice the employes themselves must ultimately make. **There is no requirement, however, that all eligible employes be organized into a bargaining unit and the employer can properly assume the responsibility for seeing that employes understand this.** Obviously, unions will not establish such an understanding.

The PLRB has established that it will not approve bargaining units that mix professionals and nonprofessionals in the same unit. A priority consideration for the employer is, will a given bargaining unit and its likely representative materially affect the employer's ability to carry on the public service with which he is charged? In other words, bargaining units — and their representatives — should fairly represent a community of interests of employes and should not so fragment and split up segments of the employe body so as to destroy or greatly hinder reasonable direction and management of the employes thus affected. Persuasive arguments can be presented for having a different bargaining agent for classified employe units than that which exists for professional employes. Ultimately, the best interests of the employes themselves will likely be best served when they have bargaining representation that most nearly reflects a common community of interests.

New agent seeking rights

Section 605, paragraphs 7 (i) and (ii) of Act 195 spell out how a new bargaining agent, seeking to represent employes in an established bargaining unit already covered by a collective bargaining agreement which has not expired, must proceed to seek a new election. These paragraphs say:

> (7) (i) No election shall be conducted pursuant to this section in any appropriate bargaining unit within which in the proceding twelve-month period an election shall have been held nor during the term of any lawful collective bargaining agreement between a public employer and an employe representative. This restriction shall not apply to that period of time covered by any collective bargaining agreement which exceeds three years. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.
>
> (ii) Petitions for elections may be filed with the board not sooner than ninety days nor later than sixty days before the expiration date of any collective bargaining agreement or after the expiration date until such time as a new written agreement has been entered into. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

Three key conditions are set forth: First, no election shall take place if an election was held within the preceding 12-month period. Second, no election will be held during the term of a lawful bargaining agreement.

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Third, petitions for such an intervening election may be filed not sooner than 90 days nor not later than 60 days before the expiration of an existing agreement.

The act and the labor board regulations are silent on what happens if an employer, in good faith, is bargaining for a successor agreement with his current bargaining agent when an intervening bargaining agent makes its intentions known.

What is required of employer?

Obviously, the employer is required to bargain in good faith with the bargaining agent certified for a given bargaining unit. However, the employer cannot be required to face the "double jeopardy" situation which can arise when, in good faith, bargaining has begun with the then certified bargaining agent but an intervenor appears on the scene.

There is some sentiment that suggests that if an agreement has already been reached with an existing bargaining agent, that agreement would become binding upon a successor bargaining agent who, through following the procedures noted above, was able to wrest bargaining rights away from the previous bargaining agent. This is obviously an area where a precedent court decision is needed to be certain of what happens in such circumstances. The act and the PLRB rules are silent as to the time period for filing a petition for decertification.

Relying upon a 1961 Pennsylvania Supreme Court decision (*PLRB vs. Loose*, 402 Pa. 620) under the Pennsylvania Labor Relations Act (private sector), PLRB has said in a case involving the Twin Valley School District that it will apply that law to Act 195 as well. In that case the Supreme Court said: "The effect of this provision is to create for a period of one year a duty upon the employer to bargain in good faith with the certified representative of his employes. At the expiration of a yearly period, however, in the absence of a contract providing otherwise, the employer's duty to bargain with the certified representative ceases, and he may then question the representative's status and its right to speak for a majority of his employes." 402 Pa. 622.

Where the employer believes there is a good faith doubt with respect to the majority status of the representative it must merely file a petition for decertification before the PLRB and ask for a hearing on this matter. As to how the employer would determine such a "good faith doubt" would be decided on a case by case basis. However, there are some common things that employers can look at: (1) what percentage of the bargaining unit is paying union dues pursuant to the dues deduction clause, if any; (2) what percentage of the bargaining unit members are paying dues in the absence of such a clause; (3) have many members of the bargaining unit indicated in some fashion to the employer that they no longer wish to belong, or in fact no longer belong, to the particular union representing the bargaining unit, and (4) any other facts that will support an allegation of the lack of majority representation by the particular bargaining representative.

The only restrictions on the employer's right to file a petition for decertification are found in Section 605 (7) of Act 195 which provides, in essence, that no election shall be conducted in any appropriate bargaining unit wherein during the preceding 12-month period an election was held, nor during the term of any lawful collective bargaining agreement between the public employer and a public employe representative.

Certain guides can be established, however, which appear consistent with Act 195, general contract law practice, and general labor law practice.

1. The employer is required to bargain in good faith with a certified bargaining agent.
2. If an employer has **legitimate** reason to believe that another bargaining agent is seeking to call for an election, the employer **has a right to refrain from bargaining with the current bargaining agent** because of this fact. In this event, the Labor Relations Board should be so notified and that notification could become the grounds for a defense against such bargaining. The labor board would then be required to make a determination.
3. If an employer bargains with a current bargaining agent in the face of demonstrable evidence that an intervening bargaining agent is attempting to seek a new election, the employer probably does so at its own peril.
4. If an employer proceeds to bargain with an existing bargaining agent within the 90-day period after notice has been filed by an intervening agent, the employer is running a grave risk of merely setting a new base from which further bargaining with a successor agent is likely to ensue. **This is unwise and not recommended.**
5. If an employer proceeds to sign an agreement with the existing bargaining agent within the 90-day period after notice has been filed by an intervening agent, it appears likely that this contract will be upset and not binding on a successor bargaining agent.
6. Even though the employer may have demonstrable evidence that an intervening bargaining agent is actively seeking a new representation election, if the intervenor **has not** filed its intentions with the labor board at least 60 days before the expiration of a current agreement, the employer can safely bargain with the existing bargaining agent and expect to end up with an enforceable contract.

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Chapter IV

Scope of bargaining under Act 195

Legislature set ground rules

The Pennsylvania Legislature, in its wisdom in enacting Act 195, saw the need for providing suitable ground rules whereby public employers and public employes could, through collective bargaining, reach mutually acceptable agreements on "wages, hours and other terms and conditions of employment." (Language of Section 701 of Act 195).

It also saw the danger, however, of collective bargaining possibly becoming a device whereby other than public agents could establish public policy. Therefore, in its further wisdom, it wisely provided that — "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel." (Language of Section 702 of Act 195.)

The Pennsylvania Legislature saw fit to include in Act 195 a limited right to strike — something which a recent Federal Bar Council's Committee on Labor Law speaks against when it says "it favors the strike ban because without it one minority group — public employes — would have a unique and often invincible power to compel the allocation of public resources according to its wishes." But the Legislature clearly intended that only public agents should set public policy, and through the language of Section 702 of the act protected the public and its agents from arbitrary establishment of public policy by vested interest groups representing public employes.

Mediators and arbitrators should not be given, either inadvertently or deliberately, the power or opportunity to set public policy — this is a function intended to be reserved to public officials under Act 195. Thomas H. Lane, Esq., counsel to the Senate State Government Committee during the drafting of Act 195, says that Section 702 of the act was deliberately intended by the Legislature to prevent employe unions from forcing public agents to capitulate on matters of public policy in favor of the union self-interest. He said, "Where the act states the employer shall not be required to bargain on policy matters, insistence on your bargaining on those matters is an unfair practice. You cannot be forced to impasse on a permissible subject of bargaining."

Senator Richard Frame, chairman of the Senate State Government Committee at the time of passage of Act 195, said that the intent of the Legislature in adopting Act 195 was very clear. "We recognized the limitations of the 1947 no-strike law," he said, "and wanted to give teachers and all other public employes collective bargaining ground rules that they could use if they so desired." He went on: "The Legislature never intended that unions, or mediators and arbitrators, would set public policy. This is a function reserved for public officials, and Section 702 of the act was designed so that this wouldn't happen."

The "Scope of Bargaining" section of Act 195, and specifically Section 702, is one of the most critical areas of the Public Employes Relations Act. This section of the law protects the school district from having to bargain over subjects which affect educational opportunities for children. Be assured that teacher organizations intend to have these and other such items subjects of collective bargaining agreements.

Meet and discuss items are not proper subjects of bargaining and any consideration given to meet and discuss items should be made part of board adopted policy **and not included in any collective bargaining agreement.**

Rather expectedly, employe unions — especially teacher unions — attempted to force bargaining on issues which were obviously matters of public policy. **But the premise that collective bargaining is not a device to determine public policy with respect to the quality, quantity, or general form of public services, including education, is firmly established under the law, and through general practice that has ensued under the law.** This is illustrated by several happenings during the first years of implementation of the act.

State College case

To illustrate that public policy determination in the field of public education was not just a Pennsylvania issue, PSBA *Negotiation Guidelines* Vol. II, No. 5 said, in part:

> At the NSBA convention in April, 1971, Raymond G. Glime, an attorney from Mount Clemens, Michigan, made the following statement regarding management of the public schools:

"At issue, is the time-honored class struggle between management and labor: Who manages the school system? To give you an idea of how important management rights are to teacher organizations, a teacher organization representative reportedly said a few years ago that teachers are not ultimately concerned about salaries, that they are ultimately concerned about obtaining management rights, and that when they have obtained management rights, they will set their own salaries."

This is not an isolated reference, but rather does represent the current national posture of the largest teachers' organization. PSBA Executive Director Fred Heddinger appeared on a program in Kansas some months before with an official of this organization at which time a similar statement was made. This posture is further borne out by a recent syndicated news story out of Washington that cites NEA pressure for added control over teachers.

Springing from this general viewpoint, the Pennsylvania State Education Association early in 1971 apparently decided to lay many of its chips on a single unfair labor practice charge which was leveled at the State College Area School District for unwillingness to bargain about things which the School District believed to be matters of public policy protected under Section 702 of the act. Some 23 issues were identified in an all-out attempt to demonstrate that bargaining could be forced on issues of interest to teacher bargaining agents.

PSBA testifies at public hearing

The Pennsylvania Labor Relations Board, recognizing the precedent significance of this case, called for a public hearing on the issues present in the case (not on the case, per se). On September 9, 1971, the following testimony was presented by PSBA before the PLRB.

Appearing at the hearing were representatives of the Pennsylvania State Education Association, the American Federation of Teachers, Local 1199, AFL-CIO Hospital Employes, and Thomas Lane representing the interests of the commonwealth in its bargaining with the statewide commonwealth unit. Other than Mr. Lane and representatives from the State College School District, PSBA was the only employer-interest group to present testimony at this hearing, which was directed at helping determine the scope of bargaining under Act 195. As expected, employe representatives made a fervent appeal for the right to bargain on everything. The PSBA testimony, presented by PSBA Executive Director Fred M. Heddinger and Director of Legislative Services Albert F. Unger, speaks for itself.

"The Pennsylvania School Boards Association is pleased to have the opportunity to bring before the honorable members of the Pennsylvania Labor Relations Board certain statements and testimony regarding the application of provisions of the Public Employe Relations Act of 1970, Act 195, as they relate to the public schools of the commonwealth. In so doing,

the association would first commend the Pennsylvania Labor Relations Board and its staff — as well as the Bureau of Mediation Services — for the excellent work that it has done thus far in working under Act 195, often under very trying circumstances and sometimes with staff insufficient to appropriately deal with the volume of work brought before it.

"The Pennsylvania School Boards Association has as its membership the 520 (now 505) local school districts, and the members of the school boards of these districts which provide the local governance of the commonwealth's public schools. It also has as its membership the 29 intermediate units of public school organization throughout the commonwealth. The association can be defined as representing general public interest in public education in the commonwealth through publicly elected officials who serve as state agents in their official roles as school board members.

"As representative of general public interest of public education, as opposed to vested interests or self-interests of private organizations, the association wishes to make note of the fact that Act 195, and lawful collective bargaining for public employes thus established, was not, and is not, intended to be a vehicle for establishing public policy. Therefore, before dealing specificially with some of the issues which represent public policy in public education which should not be determined through a bargaining process, note should be made of some of the provisions of Act 195.

"The framers of Act 195 have stated that it was not the intent of the Legislature that this law be used as a device to determine public policy. Senator Richard Frame, one of the chief architects of Act 195 has said: 'We recognized the limitations of 1947 no-strike law and wanted to give teachers and all other public employes collective bargaining ground rules that they could use if they so desired. The Legislature never intended that unions, or mediators and arbitrators, would set public policy. This is a function reserved for public officials and Section 702 of the act was designed so that this wouldn't happen.'

"Mr. Leon Hickman, chairman of the Governor's Commission which studied many aspects of collective bargaining for public employes in Pennsylvania before making its recommendations which were ultimately embraced by Act 195. earlier this year in a meeting in Harrisburg, reaffirmed that the commission did not intend that matters of public policy — other than wage and salary levels and related economic benefits — should be determined through the bargaining process. Provisions of the act itself bear out the intent of the Hickman Commission and the Legislature. Section 702 of the act says: "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers,

however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives."

"Section 703 of the act further says: 'The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the commonwealth of Pennsylvania or the provisions of municipal home rule charters.' It should be noted that, in the field of public education, the General Assembly of the commonwealth, through statutes commonly termed the School Code has assigned extensive authorities and responsibilities to local school boards and to the State Board of Education. Especially with respect to the State Board of Education, statutes have been enacted from time to time which require issuance of rules and regulations by the State Board of Education, thus giving these rules and regulations the same force for education as the originally enacted statutes, thereby making rules and regulations of the State Board of Education an integral part of the statutes enacted by the General Assembly. Similar relationships exist, in many instances, between enactments of the General Assembly and the legislative actions of local school boards. By viture of the provisions of sections 702 & 703 of Act 195 there is, therefore, a body of public policy in public education which local school districts do not have the authority to abrogate or contravene through bargaining under Act 195.

"In addition to the matters of policy set aside by Section 703 as being not lawful for bargaining under Act 195, the first sentence of Section 702 of the act sets forth matters of public policy on which bargaining is not required through the following words: 'Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel.' However, the second sentence of Section 702 of Act 195, through these words: 'Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon requested by public employe representatives,' does require public employers to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon. Note that this does not require 'meet and discuss' on all policy matters.

"It has constantly been suggested by employe agents that the phrase 'other terms and conditions of employment' can be construed to mean anything that the employe agent may desire to discuss. It should be noted that any item which falls within the broad, general description of policy as enumerated in the first sentence of Section 702 of Act 195 does not then fall within the scope of the mandated bargainable subjects as enumerated in Section 701 of the act. Thus, any subject which falls within the

designation of Section 702 of the act is, at best, a meet and discuss item and is only a meet and discuss item if it meets the criteria of the second sentence of Section 702 of the act.

"Therefore, it is in this context that the following items related to public education are set forth for further consideration along with the appropriate comments attendant to these items.

"Certain matters of policy have an effect on terms and conditions of employment and are, therefore, properly meet and discuss items. Examples of these items are:

"Class size is a policy item meeting the criteria of Section 702 of the act. **Class size is related to the functions and programs of the employer,** since it is a matter of public policy within a given school district as to how classes of instruction will be arranged and organized. **Class size is also an integral part of the standards and services** of the employer. **Class size is an integral part of the overall budget** of the employer. **Class size is,** and will be in the future, **an integral part of the utilization of technology** by the employer. Finally, **class size is greatly determined by the organizational structure** of the employer, since team teaching, for example, will dictate a certain class size arrangement whereas other organizational structures will suggest a different class size arrangement. Class size directly affects the kinds of buildings and facilities provided as a matter of public policy.

"**Extracurricular** activities are policy items meeting the criteria of Section 702 of the act. **Extracurricular activities,** such as: athletics, newspaper and yearbook activities; drama and school plays; dances and recreational activities; bands, cheerleading, debate teams, etc., **are part of the functions and programs of the employer, as well as being part of its standards of services, its organizational structure, and an integral part of the employer's overall budget.**

"**Extracurricular** activities are a matter of public policy in a local school district. Whether or not there shall be such activities is a public policy determination. Whether or not such activities shall be supervised by: volunteers; resource specialists outside of the school district who may or may not be compensated for their efforts; college level students, or college faculty members, seeking opportunities to test new theories or seeking a way to further broaden their experience background; school employes from other school districts who may live in the school district at issue; or local school district employes, who may or may not be members of a bargaining unit, are policy determinations clearly within the scope of sections 702 and 706 of Act 195. Compensation may or may not be involved in such determinations. With increasing interest by school officials to more greatly involve various segments of the community at large in appropriate activities of the educational program, it is likely that there will be a growing trend to use volunteers and community resource people for development and direction of **extracurricular** activities.

"Professional practitioners, as an integral part of their duties and responsibilities, are expected to exercise a certain degree of creativity in developing activities which are allied with the educational process.

Participating in these activities is in a large measure the mark of a professional practitioner — the payment or nonpayment of compensation not being relevant.

"Classroom discipline and disciplinary procedures are policy items meeting the criteria of sections 702 and 703 of the act. **Classroom discipline and disciplinary procedures are a part of the functions and programs of the employer. They are also a part of the employer's standards of services. In addition, the School Code and State Board of Education regulations prescribe certain disciplinary measures which must be followed to protect the interests of juveniles."**

Labor board ruling

In October 1971, the PLRB issued its ruling on the various issues embodied in the State College case. *Negotiation Guidelines* 10-15-71-29 set forth the summary of the PLRB finding as follows:

On October 14, 1971, the Pennsylvania Labor Relations Board ruled on the long-standing issue of scope of bargaining under Act 195, dealing specifically with the State College Area School District case, but ruling on 21 issues which had been brought before the board by the teachers' organization. **In this precedent-setting case, the first to really deal with what is bargainable under the act, the labor board ruled that all 21 items are policy items on which employers are not required to bargain.**

In its findings, the labor board closely followed the PSBA testimony before the board September 9. The effect of this ruling says to all school districts — all other public employers — that they can no longer be 'hung up' in negotiations by employe groups on the issues covered in this ruling. **If such a tactic is attempted, the employer should immediately file an unfair labor practice charge to have such issue removed as a possible basis for impasse.**

In its charge of unfair practices the complainant specified 23 items which it alleged the respondent refused to negotiate, as follows:

1. The availability of proper and adequate classroom instructional printed material.

2. The provision for time during the school day for team planning of required innovative programs.

3. The timely notice of teaching assignment for the coming year.

4. Providing separate desks and lockable drawer space for each teacher in the district.

5. Providing cafeteria for teachers in the senior high school.

6. Eliminating the requirement that teachers perform nonteaching duties such as but not limited to hall duty, bus duty, lunch duty, study hall, and parking lot duties.

7. Eliminating the requirement that teachers teach or supervise two consecutive periods in two different buildings.

8. Eliminating the requirement that teacher's substitute for other teachers during planning periods and teaching in noncertificated subject areas.

9. Eliminating the requirement that teachers chaperone athletic activities.

10. Eliminating the requirement that teachers unpack, store, check or otherwise handle supplies.

11. Providing that there shall be one night each week free for association meetings.

12. Providing that a teacher will, without prior notice, have free access to his personnel file.

13. Permitting a teacher to leave the building any time during the school day unless he has a teaching assignment.

14. Providing special teachers with preparation time equal to that provided for other staff members.

15. Provision for maximum class sizes.

16. Provision that the association will be consulted in determining the school calendar.

17. Provision that school will officially close at noon of the last day of classes for Thanksgiving, Christmas, spring and summer vacation.

18. Provision that at least one half of the time requested for staff meetings be held during the school day.

19. A provision that school teachers not be required to be in the school more than 10 minutes prior to the time students are required to be in attendance and not more than 10 minutes after students are dismissed (withdrawn).

20. A provision that the present Tuesday afternoon conference with parents be abolished and teachers hold conferences with parents by appointment at a mutually convenient time.

21. Provision that secondary teachers not be required to teach more than 25 periods per week and have at least one planning period per day.

22. A provision that elementary teachers shall have one period or 15 minutes per day for planning purposes.

23. Provision for released time for the president of the association for association business (withdrawn).

It appears to the board that to arrive at a sound and logical decision in this case, the members of the complainant being teachers, be considered as having a dual status, one as employes, which they clearly are, having an employment relationship with their employers, and the other as professionals having a relationship as such with their clients, the students.

From the foregoing it appears to this board that in disposing of the issues in this case the teachers must be viewed in the context of an employe status rather than in their status as professionals. An employe ,

according to Webster's New International Dictionary, second edition, is "one who works for wages or salary in the service of an employer." Hence, upon the execution of the contract of employment with the respondent, teachers assume the status of employes subjecting themselves to the authority and supervision of their employer, who is the agency created by the Public School Code in the case of school districts in this commonwealth created by the Legislature, to administer the public school system pursuant to the constitutional mandate to the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the commonwealth of Pennsylvania."

The purpose of the act, hereinbefore quoted, is to promote orderly and constructive relationships between all public employers and their employes, subject to the paramount right of the citizens of the commonwealth to keep inviolate the guarantees for their health, safety and welfare. In fulfillment of this purpose the act in Section 701 thereof, hereinbefore quoted, places a mutual obligation upon the public employer and the representative of the public employes to bargain in good faith with respect to wages, hours and other terms and conditions of employment, but excludes from the scope of such bargaining by the provisions of Section 702 of the act, hereinbefore quoted, **matters of inherent managerial policy such as, but not limited to, the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection** and direction of personnel, with the admonition to the public employers that they are required to meet and discuss on policy matters affecting wages, hours, and terms and conditions of employment as well as the **impact** thereon upon request by public employe representatives. (Emphasis supplied)

Additionally, the scope of bargaining is further limited by the provisions of Section 703 of the act, hereinbefore quoted, which provides that matters in violation of, or inconsistent with, or in conflict with any statute or statutes of the commonwealth of Pennsylvania shall not be effected or implemented in collective bargaining.

The policy-making function belongs solely to the school district and its board of school directors and their duly authorized agents by virtue of the powers conferred upon them by statute, specifically or by necessary implication. *Board vs. School District of Philadelphia*, 302 Pa. 557 (1958) *Chartiers Valley vs. County Board of School Directors of Allegheny County*, 418 Pa. 520 (1965).

Policy matters are thought of as rules of conduct and to the extent they **affect** (influence, impinge, encroach, bear upon, or concern) wages, hours, and terms and conditions of employment as well as their **impact** (used metaphorically to mean the result, effect or consequence) thereon become mandatory meet and discuss items by the public employer upon request of the public employe representative.

In light of the foregoing the respondent is not required by the act to bargain over matters which are the responsibility and prerogative of

management, but is required to meet and discuss policy matters **affecting wages, hours and terms and conditions of employment** as well as the **impact** thereon upon request of employes representatives. (Emphasis supplied)

Turning now to the 23 requests, hereinbefore set forth, for bargaining that were proposed by the employes representatives to the respondent, this board sets forth its observations as gleaned from the testimony and evidence presented at the hearing, the comments expressed by parties that presented their views at the "Scope of Bargaining" meeting held by this board on September 9, 1971, at Harrisburg, Pennsylvania, decisions of the Pennsylvania courts, articles published on the scope of bargaining, and the provisions of the act, as follows:

- Items 1, 3, 4, and 5 are not bargainable matters because they are are within the scope of matters of inherent managerial policy specifically in the areas of standards of services, functions, programs, and the overall budget of the respondent.
- Items 2, 14, 18, 21 and 22 are not bargainable matters because they are within the scope of inherent managerial policy specifically in the areas of functions and programs of the respondent and the direction of its personnel.
- Items 6, 7, 8, 9, 10 and 13 are not bargainable matters because they are within the scope of inherent managerial prerogatives, specifically in the areas of standard of services, functions and programs of the employer and standard of services.
- Item 12 is not a bargainable matter because it is within the scope of inherent managerial policy and is further regulated by the Public School Code.
- Item 15 is not a bargainable matter because it is within the scope of inherent managerial policy, specifically within the areas of standard of services, functions and programs the overall budget of the respondent.
- Items 16 and 17 are not bargainable matters because they are within the scope of inherent managerial policy and further regulated by the Public School Code.
- Item 20 is not a bargainable matter because it is within the scope of inherent managerial prerogatives, specifically the areas of functions and programs, and standard of services of the respondent and the direction of its personnel.

Changed board – changed opinion

In December 1971, Governor Milton J. Shapp changed the character of the PLRB by removing from this three-man body its then chairman, Malcolm B. Petrikin, the only person then on the board who had any substantial body of experience with municipal and school law. Also

removed was board member George B. Stuart. In their places were appointed Chairman Raymond L. Scheib, Esquire, an experienced private sector labor arbitrator and James H. Jones, an experienced private sector union leader. Thus, the new makeup of the PLRB represented a wholly private sector experience background with two of its members experienced and active private sector union leaders. Almost predictably, the new labor board issued a final order in the State College case which reversed some of the findings of the prior members of the Board. *Negotiation Guidelines* Vol. II, No. 33 (June 29, 1972) said:

> After many months of deliberation and withheld action, the Pennsylvania Labor Relations Board issued its final ruling in the State College Area School District case on June 26, 1972. (See *School Law Information Exchange*, Volume VIII, No. 54 [October 18, 1971] for original order and *School Law Information Exchange*, Volume IX, No. 38 [June 30, 1972] for final order). In its final order, the PLRB said:
>
> > *"The board recognizes that the charge of unfair practices contained some sixteen other specifications which the Board in its Nisi Decision and Order found as non-bargainable items. The Board hereby reaffirms the findings and conclusions as applied to the said sixteen specifications based within the context of the record in this case. However, in a different milieu of context, consistent with this opinion, certain of these sixteen specifications may be found to be bargainable."*
>
> The final order mandated that the school district must bargain (but not necessarily accede) on the following issues:
>
> a. The timely notice of teaching assignment for the coming year.
>
> b. Providing cafeteria for teachers in the senior high school.
>
> c. Eliminating the requirement that teachers chaperone athletic activities.
>
> d. Providing that a teacher will, without prior notice, have free access to his personnel file.
>
> e. Provision that school will officially close at noon of the last day of classes for Thanksgiving, Christmas, spring and summer vacation.

This decision leaves the remaining substantive issues in the same status as they were under the original PLRB order.

Further appeal

The final PLRB order was appealed to the Centre County Court by both parties, the school district and the employes union. *Negotiation Guidelines* Vol. II No. 58 (November 15, 1972) reported the court's decision as follows:

Judge R. Paul Campbell of the Court of Common Pleas of Centre County has sustained the State College School District's position regarding 21 items that the school district determined to be nonbargainable. The position of the court reaffirms the original position adopted by the Pennsylvania Labor Relations Board on October 14, 1971. It also reverses the new labor board's position taken on June 26, 1972, whereby the new board claimed that five of the 21 items were bargainable.

Both the union and the school district appealed the decision of the labor board. The court ultimately decided that the five exceptions made by the new labor board were contrary to the intent of Act 195 (1970), the Public Employe Law.

Judge Campbell emphasized throughout his decision, by specifically citing the language of the act, that the legislative intent of Act 195 was to preserve managerial rights. He also referenced the Hickman Commission Report, which preceded the legislative enactment, by quoting from that report as follows:

> *The new law should recognize the right of all public employes . . . to bargain collectively, subject to enumerated safeguards. Bargaining should be permitted with respect to wages, hours and conditions of employment, appropriately qualified by a recognition of existing laws dealing with aspects of the same subject matter and by a carefully defined reservations of managerial rights.*

By emphasizing the language contained in sections 701 and 702 of the act, Judge Campbell said, " . . . **that policy matters affecting wages, hours, terms and conditions of employment, as well as the impact thereon, are in that category which requires the parties to meet and discuss.**" He recognized the dual status that teachers have: one, as employes having an employment relationship with their employer; the other as professionals in their relationship with the students. He emphasized that the law intended to use professional expertise in the meet and discuss area, which is not under the collective bargaining arrangement. He said, "It follows from a careful review of the act that it fundamentally pertains to the employer-employe relationship with recognition being given to their professional status by the use of their professional expertise in 'meet and discuss matters.' "

Citing the requirements of the Pennsylvania Constitution and Public School Code, which place broad inherent managerial powers in the school board, Judge Campbell also recognized that Section 702 of Act 195 preserves the powers reserved to the board. The five items ruled on by the Centre County Court are numbered in the same manner as in the original State College decision and are listed as follows:

3. Timely Notice of Teaching Assignment For the Coming Year

The labor board, in its final order, found that management clearly had the right to determine teaching assignments inasmuch

as they related to selection and direction of personnel. They then found that notice of such teaching assignments was a bargainable matter. We believe this to be error. In any district where there is a high number of personnel changes, it would impose a very serious restriction on the selection and direction of personnel. Flexibility of operation would be lost and extra staff members would have to be employed. This strikes at the very heart of inherent managerial policy and for this reason we hold that it is not a matter for collective bargaining.

5. Providing Cafeteria for Teachers In the Senior High School

We admit this to be a close issue. Were the subject stated differently, we would affirm. However, if we interpret the matter as one pertaining to the construction and equipping of a separate cafeteria for teachers, we must say no to collective bargaining. This falls within the scope of inherent managerial policy as it relates to the overall budget of the school district.

9. Eliminating the Requirement that Teachers Chaperone Athletic Activities

We are firmly of the opinion that this item specifically relates to the question of the inherent right of a school board to assign personnel. As long as there are extracurricular activities in a school, we believe the school board must be vested with the authority to assign personnel to perform the required duties. The compensation to be allowed therefor would certainly be a collective bargaining matter but the right of the school board to require and to assign teachers to chaperone these activities is clearly a matter relating to direction of personnel, which is excluded from bargaining under Section 703 of the act.

12. Providing that a Teacher Will, Without Prior Notice, Have Free Access to His Personnel File

We believe this matter is within the scope of inherent managerial policy and regulated by the School Code. We believe the labor board was in error in making a statement that the employer could maintain a separate file in which confidential material could be retained. This would only raise the further issue of what should be contained in a personnel file and what should be placed elsewhere. The request is foreign to any concept of employer-employe relationship. Under no circumstances is it required to guarantee due process. Teachers are already well protected under the School Code in this respect.

17. Provision that School Will Officially Close At Noon on the Last Day of Classes for Thanksgiving, Christmas, Spring and Summer Vacations

It should be noted that this matter has nothing to do with the number of days worked nor the number of hours per day to be worked by employes. It pertains to the school calendar. We firmly believe that when school begins, when it ends, when the buildings are opened, when children shall be admitted and when holidays occur are matters of inherent managerial policy as regulated by the Public School Code and under no circumstances should be made items of collective bargaining. We respectfully suggest that the labor board confused the issue of hours and employment with the matter of when school would officially close and for this reason we must overrule the labor board on this point.

We surmise that this subject was requested by teachers because of pupil restlessness and resultant disciplinary problems occurring on the last half day of school preceding a vacation. Assuming we eliminate the last half day, does not the immediately preceding half day then become the last? The length of the school term cannot be made a collective bargaining item.

Commonwealth Court decides

As expected, the Centre County decision was appealed to the Commonwealth Court. The Commonwealth Court proceedings found the following lineup of litigants. Joining with the local education association and PSEA were: The Pennsylvania Federation of Teachers (AFT); the Association of Federal, State, County, and Municipal employes (AFSCME); and the American Association of University Professors (AAVP). Joining with the school district was PSBA, the Pennsylvania Association of Elementary School Principals and the Pennsylvania Association of Secondary School Principals, both of whom joined in the PSBA brief.

On June 6, 1973, the Commonwealth Court upheld the Centre County court opinion (see *School Law Information Exchange*, Vol. IX, No. 65) and the original PLRB decision. Again as expected, this decision was appealed to the Pennsylvania Supreme Court.

Supreme Court decides

In April 1975, the Pennsylvania Supreme Court handed down its decision after more than a year of deliberation after hearing arguments on the case. Appearing before the Supreme Court as litigants were the following : State College Area School District, Pennsylvania School Boards Association, Pennsylvania Association of Elementary School Principals, Pennsylvania Association of Secondary School Principals; Pennsylvania State AFL-CIO, American Association of University Professors, Pennsylvania Federation of Teachers, American Federation

of State, County and Municipal Employes and the Pennsylvania Labor Relations Board.

It must be remembered that the Supreme Court decision did not, in fact, reverse the Commonwealth Court decision on any of the 21 specific issues that were embodied in that case.

Justice Pomeroy in his concurring opinion, said: "The court's mandate is thus much like granting a 'new trial' without telling the tribunal which must conduct it and the courts which, if called upon, must review the new result whether and wherein they erred as to any particular issue at the first 'trial.' There is a risk, therefore, that to remand rather than decide the specific items of dispute which were addressed by the courts and board below may prove to be a waste both of manpower and of time, and be but a postponement of the day when this court will have to make the ultimate resolution."

It would seem that the action of the court, while failing to confirm the action of the Commonwealth Court as to the issues considered, may have re-emphasized the importance of the "meet and discuss" provisions of Section 301 (17) of Act 195. The court's language said: "If it is determined that the matter is one of inherent managerial policy but does affect wages, hours and terms and conditions of employment, **the public employer shall be required to meet and discuss (not bargain) such subjects upon request by the public employer's representative pursuant to Section 702 (of Act 195).**" Section 702 must be considered in conjunction with Section 301 (17). Thus, the court has given little comfort to those who would contend that "everything is now bargainable." **It is not**, at least not on the basis of this court decision.

The court said some other things worth keeping in mind as background. It said:

> ...we are mindful of the distinctions that necessarily must exist between legislation primarily directed to the private sector and that for public employes. The distinction between the public and private sector cannot be minimized. Employers in the private sector are motivated by the profit to be returned from the enterprise whereas public employers are custodians of public funds and mandated to perform governmental functions as economically and effectively as possible. The employer in the private sector is constrained only by investors who are most concerned with the return for their investment whereas the public employer must adhere to the statutory enactments which control the operation of the enterprise. We emphasize that we are not suggesting that the experience gained in the private sector is of no value here, rather we are stressing that analogies have limited application and the experiences gained in the private employment sector will not necessarily provide an infallible basis for a monolithic model for public employment.
>
> We also recognize the wisdom of refraining from attempting to fashion broad and general rules that would serve as a panacea. The

obviously wiser course is to resolve disputes on a case-by-case basis until we develop, through experience in the area, a sound basis for developing overall principles.

The effects of sections 701-702

The court said several things related to the effects of sections 701 and 702 that are helpful to review.

> ...Section 702, when read in conjunction with Section 701, requires us to distinguish between the area of managerial prerogative and the areas of vital concern to employes. The Commonwealth Court's premise that any interpretation of sections 701 and 702 must recognize the dominance of a legislative intention to preserve the traditional concept of inherent managerial policy emasculates Section 701 and thwarts the fulfillment of legislative policy sought to be achieved by the passage of the act. Further, such a view ignores the fact that the acceptance of the Hickman Commission's recommendation and the passage of Act 195 was a repudiation of the traditional concept of the sanctity of managerial prerogatives in the public sector. The introduction of a concept of mandatory collective bargaining, regardless of how narrowly the scope of negoation is defined, necessarily represents an encroachment upon the former autonomous position of management. Further, the Hickman Commission's recognition of the need for collective bargaining to produce stability in the public sector argues against an inference that they intended their recommendation to be construed as suggesting something less than a viable bargaining process in the public sector. The necessity for qualifications to adjust private sector concepts to meet the needs of the public sector does not justify the conclusion that the qualifications should be interpreted in a manner that would strip the bargaining provision of any meaning. We recognize the principle that a statute is never presumed to deprive the state of any prerogative or right unless the intention to do so is clearly manifest. *Hoffman vs. Pittsburgh*, 365 Pa. 386, 75 A.2d 649 (1950). However the passage of Act 195, in our view, expresses a manifest intention to create a sufficiently vital collective bargaining process capable of meeting the need to restore harmony within the public sector....
>
> ...The majority in the Commonwealth Court and some of the briefs filed in this Court attempt to equate the preservation of the inherent managerial policy as synonymous with the public interest and the concern of the employes as a private interest. Proceeding from this premise it is asserted that the private interest must give way before the public good. This reasoning is offered to provide the basis for their premise, the dominance of the legislative intention to preserve managerial prerogatives. This argument fails to perceive that the true public interest is the effective and efficient operation of public employment and that collective bargaining as well as managerial prerogatives are only significant insofar as they further this objective. In view of the recognized importance of a meaningful

system of collective bargaining in maintaining harmony and order in the public sector an interpretation of Section 702 that would virtually eclipse the legislative intent expressed in Section 701 would render a real disservice to the true public interest.

A determination of the interrelationship between sections 701 and 702 calls upon us to strike a balance wherein those matters relating directly to "wages, hours and other terms and conditions of employment" are made mandatory subjects of bargaining and reserving to management those areas that the public sector necessarily requires to be managerial functions. In striking this balance the paramount concern must be the public interest in providing for the effective and efficient performance of the public service in question. The Supreme Court of Kansas was recently required to consider this problem. *National Education Ass'n. of Shawnee Mission, Inc. vs. Board of Education of Shawnee Mission Unified School District* No. 512, 212 Kan. 741, 521 P.2d 426 (1973). In that decision the Court was confronted with a dispute between a teachers' association and the board of education. In resolving questions relating to the scope of negotiations provided under their statute they recognized that "terms and conditions" which were negotiable under the terms of the statute as something more than minimal economic terms of wages and hours, but something less than the basic educational policies of the board of education. That court suggested that the courts of that jurisdiction should resolve these issues on a case-by-case basis. As has been indicated, we also agree with the wisdom of this approach at this time. Further, the Kansas court suggested:

> The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole. *Id.* at , 512, P.2d at 435.

We believe that the suggested test is helpful in attempting to strike the balance between sections 701 and 702 of our statute. We recognize that in many instances the line will be difficult to draw, however, if we remain ever mindful that our paramount concern in this area is the public interest, no situation will be insoluble.

Thus we hold that where an item of dispute is a matter of fundamental concern to the employes' interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under Section 701 simply because it may touch upon basic policy. It is the duty of the board in the first instance and the courts thereafter to determine whether the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole. If it is determined that the matter is one of inherent managerial policy but does affect wages,

hours and terms and conditions of employment, the public employer shall be required to meet and discuss such subjects upon request by the public employe's representative pursuant to Section 702."

The effect on Section 703 regarding prohibited bargaining

The court opinion re-affirmed the fact that Section 703 of the act prohibits bargaining on issues that are controlled by directory statutes. Said the court: "We believe that Section 703 only prevents the agreement to and implementation of any term which would be in violation of or inconsistent with any statutory directive". Typical examples of this are "shall" legislation as contrasted to "may" legislation. For example, Section 1166 of the School Code dealing with sabbatical leave circumstances gives no discretion to the parties. Similarly, retirement legislation and retirement system contributions as outlined in sections 3321 through 3371 of the School Code represents an example of no discretion on which bargaining is prohibited by Section 703.

Said the court:

> The relationship between sections 701 and 703 is particularly significant in a highly regulated area such as public education. Article 3, Section 14 of the Pennsylvania Constitution provides:
>
> The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.
>
> Under the Public School Code of 1949 of the General Assembly provided a comprehensive system to meet the educational needs of the citizens of this commonwealth. In so doing, school districts were created as an agency of the state charged with the responsibility of administering the educational program within its assigned territory. *Slippery Rock Area Joint School System vs. Franklin Twp. School Dist.*, 389 Pa. 435, 133 A.2d 848 (1957). To enable the school districts to discharge this constitutional mandate, the General Assembly vested in the school districts the necessary powers. Public School Code of 1949, *supra*, §2-211. The majority of the Commonwealth Court reasoned that the duties and prerogatives imposed upon and granted to school boards under the Public School Code of 1949, and other pieces of legislation could not be the subject of collective bargaining under the terms of section 703. **We cannot agree.**
>
> The mere fact that a particular subject matter may be covered by legislation does not remove it from collective bargaining under section 701 if it bears on the question of wages, hours and conditions of employment. **We believe that Section 703 only prevents the agreement to and implementation of any term which would be in violation of or inconsistent with any statutory directive....**

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The fallacy in the view expressed by the Commonwealth Court's majority is the failure to perceive the distinction between the "Inherent managerial prerogative" concept set forth in Section 702 and the thrust of Section 703. The purpose of Section 703 was not to further define "inherent managerial policy" but to recognize that Act 195 did not affect the continuing vitality of existing law at the time of that Act's passage. Thus, **the fact that a prerogative was statutorily recognized under Section 1151 does not mandate that it be included within the "inherent managerial policy" concept of Section 702.** That determination rests solely on the considerations suggested in our discussion under Part II of this opinion. **Section 703 merely prevents a term of a collective bargaining agreement from being in violation of existing law. . . .**

If however the General Assembly mandates a particular responsibility to be discharged by the board and the board alone, then the matter is removed from bargaining under Section 701 even if it has direct impact upon "wages, hours and other terms and conditions of employment." The removal from collective bargaining results not because it necessarily falls within the purview of Section 702 (in fact it may clearly be within the scope of 701), but rather because to do otherwise would be in direct violation of a statutory mandate and thus excluded under Section 703....

We therefore conclude that items bargainable under Section 701 are only excluded under Section 703 **where other applicable statutory provisions explicitly and definitively prohibit the public employer from making an agreement as to that specific term or condition of employment."**

Scope of bargaining is critical

As one may deduce from the space devoted here to scope of bargaining, and to the extensive court proceedings that surrounded the State College case, the **scope of mandatory bargaining is critical.** The determination as to what issues are subjects of mandatory bargaining determines what issues may be taken to impasse and what issues may ultimately be the grounds for a legalized strike under the act.

Prior to the enactment of Act 195 some school districts had entered into bargaining with little thought about the critical nature of scope of bargaining. There are still some districts in the state that are attempting to recover from mistakes made in this regard before the enactment of the law, or made in the early days of the law.

Aside from the State College case that enumerated a broad range of issues, several other cases serve to illustrate the significance of scope of bargaining.

Nazareth case

In a ruling by the Pennsylvania Labor Relations Board on August 10, 1972, in a situation which occurred in the Nazareth Area School District

(PLRB case No. PERA-C-1884-C), the labor board ruled "that teacher preparation is a matter of inherent managerial policy and finds the Nazareth Area Education Association has committed an unfair labor practice for continuing to propose a contract provision providing for teacher preparation time."

This ruling is consistent with the intent of Act 195 and its provisions, and serves to further re-affirm the substance of the State College Area School District ruling by PLRB. The following text from the PLRB order and ruling serves to illustrate that if school districts take appropriate action in getting such issues before the board, they can get relief from these unfair practices of employe groups. Note this language from the order:

"Considering first whether or not teacher preparation time is a matter of inherent managerial policy, the act sets forth in Section 702 that the direction of personnel is an inherent managerial policy and that public employers shall not be required to bargain over such a matter. Section 510 of the Public School Code sets forth the broad inherent managerial policy of the board of school directors as follows:

" 'The board of school directors in any school district may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding the management of its school affairs and the conduct and deportment of all superintendents, teachers and other appointees or employes during the time they are engaged in their duties to the district.'

"Matters of 'inherent managerial policy' over which public employers are not obligated to bargain are such matters that are firmly fixed and belong to the employer as a right or permanent and inseparable element, quality or attribute involved in the constitution or essential character of the employer, and incapable of being surrendered or transferred where specifically prohibited by statute.

"The policy-making function belongs solely to the school district and its board of school directors and their duly authorized agents by virtue of the powers conferred upon them by statute, specifically or by necessary implication. *Barth vs. School District of Philadelphia*, 393 Pa. 557 (1958) *Chartiers Valley Joint Schools vs. County Board of School Directors of Allegheny County*, 418 Pa. 520 (1965).

"Broad discretionary powers have been given school authorities to enable them in exercising their policy-making function to ensure a thorough, efficient, effective and better education for the children of this commonwealth and any statutory erosion of these powers should be strictly construed on the basis that the public interest is paramount. It has been long recognized that school officials are trustees of the powers vested in them and cannot divest themselves of the powers which have been conferred upon them for a public purpose. *Walker vs. Scranton School District* 338 Pa. 104. *Newkirk vs. School District of Philadelphia* 1430 September Term, 1968.

"Turning now to the matter of whether inherent managerial policy is controlled by legislative dictate, it appears that by constitutional mandate the General Assembly is required to provide for the maintenance and

support of a thorough and efficient system of public schools. Pennsylvania Constitution, Article III, Section 14. The General Assembly's duty is mandatory and its power over education cannot be fettered or extinguished.

"The Legislature created school districts as its agencies to administer its constitutional duty to maintain a thorough and efficient system of public education. *Wilson, et. ux. vs. Philadelphia School District, et. al.* 328 Pa. 225; *Smith vs. Darby School District*, 399 Pa. 301. School districts are not 'municipal corporations,' not having legislative powers, and do not possess governmental attributes of municipalities. *Wilson, et. ux. vs. Philadelphia School District, et. al.*, supra; *Wharton vs. School Directors*, 42 Pa. 358. The school district has only the powers that are granted by statute, specifically or by necessary implication. *Barth vs. School District of Philadelphia*, 393 Pa. 557, 1958; *Chartiers Valley Joint Schools vs. County Board of School Directors of Allegheny County*, 418 Pa. 520.

"In view of the foregoing, we conclude that the allotment of the teachers' time to classroom teaching or to the preparation for the same is a matter of inherent managerial policy and that the duty to exercise the same must be exercised by the school board in accordance with the dictates of the Legislature. This conclusion is analogous to the holding of the Philadelphia Court of Common Pleas in the case of *Newkirk vs. School District of Philadelphia*, supra, in which the court held that the assignment of teachers is a matter of inherent managerial policy. We conclude that neither the teacher nor the board, nor both combined, can circumvent by contract, or otherwise, the statutory right of the board to control the allocation of teachers' time including the allotment thereof to actual classroom teaching or the preparation for the same. This policy-making function of the school board must be exercised in the best interest of the children and must foster a more effective and efficient educational system.

"Following the board's decision in the State College Area School District, the board of school directors, PERA-C-929-C, the Nazareth Area School District is not required to bargain on the matter of teacher preparation time. However, it is noted that under Section 702 as above set forth, the matter of teacher preparation time is a matter for 'meet and discuss'; however, it appears from the testimony that no request by the public employe representative has been for the same in this case. Obviously, if such a request is made by the employe representative, it should be honored by the public employer."

Another example

Since the enactment of Act 195 it has been pointed out many times the problems that occur when a decision is made to bargain on, or to include in a contract, issues that the employer does not want to become controlled by the grievance process, and by arbitration decisions that flow out of such a process.

PLRB, in a decision affecting the Northwest Tri-County Intermediate Unit (see *School Law Information Exchange*, Vol. XI, No. 80 and *Negotiation Guidelines*, Vol. V, No. 1), found the employer guilty of an unfair labor practice related to scope of bargaining. In its opinion PLRB said:

> The Board (PLRB) has considered Section 702 and Section 703 of the act many times and has consistently held that matters of inherent managerial policy are only permissively bargainable. This being so, the employer at his option may either decide to bargain the matter or relegate the matter to a meet and discuss item. However, once an employer chooses to bargain on a permissive matter, he may not thereafter have a second chance to exercise this option. There are several obvious reasons why a second opportunity must be precluded. First, since the issue is a permissive matter of bargaining, once the option to bargain is made by the employer, failure to bargain by either party on the matter would be an unfair practice and the employer declaring the item nonbargainable is in effect refusing to bargain. Second, once the matter is placed on the bargaining table it becomes a part of the give and take of arriving at a contract and its presence effects the over-all outcome of the negotiations. While it is still being negotiated other matters may be settled which might still be contended, if the disputed items were not still on the table.

PLRB also said:

> In this case no one has claimed that any of the six (6) items on Exhibit 1 are not part of wages, hours and other terms and conditions of employment. The employer through its original negotiator never claimed the management prerogative on any of these items and proceeded to negotiate and reach an agreement with the association on all six (6) items.
>
> When the settlement agreement provided that these six (6) items be returned to the bargaining table and the parties agreed to bargain in good faith from scratch this was only limited by the last sentence of Section 701 which states: "but such obligation does not compel either party to agree to a proposal or require the making of a concession."

The effect of this PLRB decision is twofold:

(1) It suggests that even though a negotiator admitedly does not have the power, or legal authority, to bind a school board, or school district, to a tentative agreement without the ratification of such agreement by the school board, the PLRB **may** find the school board guilty of an unfair labor practice because its negotiator may have reached a tentative agreement that the school board subsequently refused to ratify because it included issues, or provisions, beyond the school board's intent, and possibly beyond the discretion given to the negotiator by the school board.

(2) If issues are deemed to be of a policy, or nonbargainable, nature, they should not be left on the bargaining table so that it may be construed that there was an intention to bargain over them.

The effect of this decision should be apparent.

Without getting into the merits of this instant case, clearly the negotiator representing a public body does not have the power to bind the employer, just as the negotiator representing the employe union will probably not have the power to bind the employe organization without ratification by the membership, or governing body, of the employe organization. In the case of a school district, the school board has the power and responsibility to approve and accept or disapprove and reject the **tentative** agreement reached by its negotiator. Such an action **is not**, per se, the basis for an unfair labor practice.

The effect of this opinion is to serve again as a warning that the issues on which bargaining is undertaken should not be viewed lightly, but should be carefully and deliberately determined based on this PLRB attitude that once a willingness to bargain on an issue has been indicated, one can no longer in that bargaining session (or series of bargaining sessions) be shielded by the defense that such issues are not bargainable issues.

Issue further defined

Three other cases that followed the Nazareth and State College cases help to further define the effect of Section 703 of Act 195 and to give guidance as to what may be mandatory subjects of bargaining.

The issue of whether or not directive statutory requirements may become bargainable subjects in a collective bargaining agreement underlies all three of these cases. **In all cases, the courts have determined that they cannot become bargainable subjects.**

In the first case, the issue was whether or not the sabbatical leave provisions of the School Code could be further modified by the terms of a collective bargaining agreement. The case involved the Cumberland Valley School District (See *School Law Information Exchange*, Vol. XIII, No. 45 [June 4, 1976]) where both the Cumberland County Court and the Commonwealth Court ruled that the provisions of the School Code prevail. Said the Court:

> . . . Section 703 of the Public Employe Relations Act, Act of July 23, 1970, P.L. 563, 43 P.S. §1101.703, is clear in forbidding the implementation of any term within a collective bargaining agreement which is inconsistent with any statute. Our inquiry is therefore limited to the question of whether the term contained in the agreement is in conflict with the Public School Code of 1949, Act of March 10, 1949, P.L. 30, Article XI, §1169, as amended by Act of July 30, 1963, P.L. 358, 24 P.S. §11-1169, which reads as follows: "The person on leave of absence shall receive one-half of his or her

regular salary during the period he or she is on sabbatical leave. The Association contends that the legislature intended to set out the minimum compensation to be paid to a professional employe on leave; whereas the School District argues that the intent of the statute is to set compensation at one-half of the regular salary, and only one-half. While this statute, when read in a strictly technical manner admits of the former interpretation, the latter interpretation must be adopted. . . .

. . . The Supreme Court of Pennsylvania has recently said that terms contained in a collective bargaining agreement "are only excluded (unenforceable) under section 703 where other applicable statutory provisions explicitly and definitively prohibit the public employer from making an agreement as to that specific term or condition of employment. *Pennsylvania Labor Relations Board vs. State College Area School District*, _____ Pa. _____, 337 A.2d 262, 270 (1975). As pointed out in the concurring opinion of Justice Pomeroy, the law of the *State College* case has not yet been applied to a factual situation. On the facts before us, it would not do justice to the intent of the legislature to say that because the statute does not expressly prohibit bargaining, the statute is to be a mere guideline . . . .

The second case involved the Tyrone Area School District (See *School Law Information Exchange*, Vol. XIII, No. 58 [June 16, 1976] and *Public Sector Arbitration*, Vol. II, No. 71 [December 10, 1975]). In this case the issue was whether or not the School Code controls in matters dealing with substitute and temporary professional employes. Both the arbitrator and the Commonwealth Court ruled that the provisions of the School Code prevail despite a "just cause" provision in the bargaining agreement. Thus, although the issue arose under the grievance procedure of the bargaining agreement, the matter was beyond the authority of the arbitrator and beyond the discretion of the bargaining process and was a nonbargainable issue.

The third case had to do with maintenance of membership in a union and involved the Dauphin County Vocational-Technical School (See *School Law Information Exchange*, Vol. XIII, No. 59 [June 16, 1976]). Here again the Commonwealth Court interpreted Section 703 of Act 195 to mean that the provisions of the School Code that set forth the reasons and manner for dismissal of tenured professional employes could not be subverted to the provisions of a collective bargaining agreement. Said the Court: It is clear that the maintenance of membership provision of the agreement is inconsistent with Section 1122 of the Code insofar as the remedy for noncompliance with the said provision is the termination of the services of the professional employe involved. The provision conflicts with the statute and, therefore, cannot be effectuated or implemented in the agreement.

Meet and discuss

"Meet and discuss" provisions of Act 195, and of the contracts that have arisen under the act, have become the basis of much misunderstanding and controversy by employes and employers alike. Meet and discuss becomes an even more important process under the Supreme Court decision in the State College case, since that decision focuses added attention on it.

Meet and discuss not all-encompassing

Section 702 of Act 195 says: "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives."

Section 301 (17) of Act 195 says: "Meet and discuss means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised."

Especially significant is the following phrase from the second sentence of Section 702: "**shall be required to meet and discuss on policy matters affecting wages, hours, and terms and conditions of employment as well as the impact thereon upon request by public employe representatives.**" It should be noted that meet and discuss is also the limit of requirements for policy matter impact as well as the matters themselves, and that these requirements arise only as a result of request by public employe representatives.

This statement must be considered along with this phrase from 301 (17) above: "Provided, That ... decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised." It must also be considered in conjunction with Section 1201 (b) (9) which says: "Employe organizations, their agents, or representatives, or public employes are prohibited from: (9) Refusing to comply with the requirements of 'meet and discuss.' "

Thus, it is recognized in the law that there are certain policy matters which affect wages, hours and terms and conditions of employment wherein **the employer is required to meet and discuss with the employe representative and where the employe organization is required to accept the determination of the employer as final.**

From this, it is also apparent that meet and discuss is not an all-encompassing procedure, but may be essentially considered limited to items which bear on the mandated bargainable items included in the scope of Section 701 of the act.

Look at examples of items that are obviously meet and discuss and those which cannot conceivably be considered meet and discuss. Class size is without question a policy matter which also bears on "terms and conditions of employment." There is no educational justification for a a uniform or precise regulation of class size. Such an issue is a public policy matter which will be highly influenced by the educational philosophy that prevails in a given school district or community. Ungraded schools, open classrooms, and varying uses of technology and other techniques, plus increasing variations in school building styles are all public policy determinations which markedly affect the structure of classroom size and organization.

The thrust to control class size by employe organizations is basically an economic thrust to regulate jobs. While there is no mandate under the act to bargain on class size, there is a requirement for the employer to meet and discuss on such an issue and there is a compulsion on the employe organization to accept the employer's determination or decision after meeting and discussing.

The school calendar is a public policy matter. **When** children shall go to school is not a matter to be determined through a bargaining process. However, **when** children go to school obviously affects teachers and other school employes. Therefore, school officials can be required to meet and discuss on the school calendar, but the determination of such an issue is made by the employer for the public and the employe organization is compelled, under the law, to accept such a determination. This should not be confused with the number of days per year, or hours per day, that a teacher or other employe is expected to work for a given salary or wage. Both hours and days to be worked are bargainable issues.

An example of an item which is neither a bargainable subject nor a meet and discuss item is whether or not a given item of curriculum shall be in the offerings of a given school district. This is a public policy matter which does not bear on hours, wages or terms and conditions of employment. There is no requirement to bargain or meet and discuss on such an item.

Meet and discuss distinct from contract

Meet and discuss items should be carefully separated from the bargaining agreement and the grievance procedure which is an integral part of the bargaining agreement. Ideally, meet and discuss provisions and the items related to such provisions should be treated in a separate document — distinct from the bargaining agreement. In this event, some statement should be in the bargaining agreement to the effect that: "meet and discuss items are enumerated and dealt with in a separate document

and are not a part of the bargaining agreement and are not subject to the grievance procedure contained in the agreement."

Should there be a compelling reason for including in the same document both the terms and conditions of the bargaining agreement as well as whatever provisions may be arrived at on meet and discuss items, there should be a clear and distinct separation of the two sets of provisions so that there is no ready way for an arbitrator to reach over into meet and discuss items and attempt to make decisions on such items that bind both parties.

The rationale for this is quite simple. Arbitrators, or other third parties, should not establish public policy. All of the meet and discuss items should be of a public policy nature. Courts have held in other states that school boards do not have the authority to delegate to arbitrators — or other third parties — the determination of public policy for which they are accountable. Presumably, these precedents will ultimately prevail in Pennsylvania, but there should be no reason to depend upon such rulings if meet and discuss provisions are properly insulated from the provisions of the bargaining agreement and the grievance procedures.

A suggested meet and discuss procedure

It is recommended that meet and discuss procedures be kept as informal and unstructured as possible. Meaningful meet and discuss results will most likely occur when the lowest level of the organizational structure can be involved. Therefore, first level supervisors and building principals should be key parties to meet and discuss procedures. One possible way of handling meet and discuss items is the following:

1. A simple statement in the bargaining agreement that: "The two parties agree that each will conform to the meet and discuss provisions of Act 195. A separate memorandum of understanding sets forth procedures whereby items of such a nature will be discussed."
2. In the memorandum of understanding the following is suggested as one way of properly treating meet and discuss provisions.

   (a.) A statement such as: In compliance with the meet and discuss provisions of Act 195 as set forth immediately below, the parties agree that the following procedure shall be used in dealing with meet and discuss items.

   (1) (Recite language of Section 702 of act.) "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours

and terms and conditions of employment as well as the impact thereon upon request by public employe representatives."

(2) (Recite language of Section 301 (17) of act.) Meet and discuss means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised."

(3) The following procedures are to be implemented in accordance with Section 1201 (a) (9) and 1201 (b) (9) of Act 195.

(b.) The employer shall be represented in meet and discuss sessions by four first-level supervisors or building principals and one central office staff person, all of the employer's own choosing.

(c.) The employe organization shall be represented in meet and discuss sessions by five persons chosen from the bargaining unit by the employe organization.

(d.) The meet and discuss committees representing the employer and the employe organization shall meet periodically (monthly or bimonthly, or some other period as the circumstances may dictate) at times mutually agreeable to the two committees, but not during regular working hours for the purpose of conferring on items deemed by both parties to be meet and discuss items.

(e.) Annually, or at such other times as the parties may mutually agree, the meet and discuss committees shall meet with the superintendent of schools to review the effect and results of the meet and discuss sessions.

(f.) Meet and discuss subjects shall be the following subjects:

(1) **Class size**

(2) **School calendar.**

(3) **Unassigned class periods for teachers or other instructional personnel.**

(4) **Preparation periods for teachers or other instructional personnel.**

(5) **Advisory committees for curriculum review.**

(6) **Other subjects mutually agreed upon by both parties as being meet and discuss items.**

Not everything under the sun

Meet and discuss items are not intended to be everything under the sun that people may want to talk about from time to time. Instead, they are

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intended to be policy matters which are tied directly to bargainable subjects included in the scope of Section 701 of the act. Note that unless a meaningful meet and discuss procedure is set forth and instituted by the employer, not only may the employer be guilty of an unfair practice, but in all likelihood such failure to comply with the act will also result in meet and discuss items ultimately finding their way into bargaining agreements and under the control of arbitrators. This is something that was not intended and cannot happen if properly handled.

Spells out unfair practices

Section 1201 of the act rather explicitly spells out the basis of unfair practices by both employe groups and employers. Charges by employe groups as to unfair practices by employers should be required to be supported by one or more statements under Section 1201 (a). If such charges cannot be supported by one or more of these statements, then the charges are likely unfounded. But any defense against such charges should insist that the hearing examiner, or the Labor Relations Board, recognize that the charges are unfounded because they fail to meet these criteria.

Section 1201 (b) spells out the explicit provisions of the act which are "unfair practices" by employe organizations. Employers should be prepared to move against employe organizations which violate these provisions just as readily as employe organizations have already demonstrated that they will likewise move against employers. **Especially as related to violations of Section 1201 (b) (9), employers should be prepared to demonstrate that the employe organization is failing to abide by the provision of the act which makes the decision of the employer final on meet and discuss items.**

Court decision helps define meet and discuss

In a case involving the association of Pennsylvania State College and University Faculties (APSCUF) and Indiana University of Pennsylvania, the Commonwealth Court upheld a ruling of the Pennsylvania Labor Relations Board. This decision helps to further define the effect of meet and discuss under Act 195.

The court had this to say: ["C]ollective bargaining sessions and meet and discuss sessions were intended by the Legislature for two different purposes. The former is intended for the purpose of arriving at a collective bargaining agreement and the latter merely provides a forum for a dialogue between the parties after an agreement has been consummated. The meet and discuss sessions exist as a device to permit input or recommendations from the employes **on policy matters affecting wages, hours and terms and conditions of employment so as to assist the public employer in making its discretionary resolution or disposition of the issues in question.**" (Emphasis added.)

To further define its legal understanding of meet and discuss, the court said: "The parties to a meet and discuss session must not be guilty of bad faith, and this implies good faith insofar as it pertains to fairness and sincerity, **but it does not imply good faith as that term is used as a phrase of art in collective bargaining.**" (Emphasis added.)

In its decision, the court set forth 12 criteria that may be used as a checklist in determining the process of meet and discuss. They are:

1. **"Good faith collective bargaining" is a phrase of art in labor law.**
2. **The term "good faith" is specifically used in Section 701 [collective bargaining] and is not specifically used in sections 702 or 301 [17].**
3. **Good faith in collective bargaining is generally satisfied by a bona fide attempt of one party to reach agreement with the other party.**
4. **The meet and discuss process seeks different goals than those sought under collective bargaining.**
5. **The parties [to meet and discuss sessions] may not discharge their statutory obligations in bad faith.**
6. **The negotiation of an agreement is not one of the purposes of the meet and discuss session, although that could be a fortunate result.**
7. **A meet and discuss session can be a problem-solving process, as well as a problem-airing process.**
8. **One of the purposes of a meet and discuss session is to give the parties to a collective bargaining agreement an opportunity to resolve problems, questions and misunderstandings which occur during the life of an agreement.**
9. **Nothing arising out of a meet and discuss session is necessarily binding upon the employer.**
10. **Only the employes may request a meet and discussion session.**
11. **No affirmative action on the part of the employer may be required as a result of a meet and discuss session.**
12. **A collective bargaining session and a meet and discuss session are mutually exclusive.**

Effect of statutes

The General Assembly in enacting Act 195 wisely included Section 703 which preserves and holds inviolate statutes enacted by the General Assembly. Section 703 of the act says: "The parties to the collective bargaining process shall not effect or implement A PROVISION IN a collective bargaining agreement if the implementation of that PROVISION would be in violation of, or inconsistent with, or in conflict with any statute or statues enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters."

Despite this safeguard, employe agents — and employers on occasion — have endeavored to bargain about matters which are established by statute for which school districts have no discretion or authority to alter.

The Supreme Court emphasized the effect of Section 703 in the State College case when it said: "We believe that Section 703 only prevents the agreement to and implementation of any term which would be in violation of or inconsistent with any statutory directive . . . . Section 703 merely prevents a term of a collective bargaining agreement from being in violation of existing law . . . ."

"If however the General Assembly mandates a particular responsibility to be discharged by the board (school board) and the board alone, then the matter is removed from bargaining under Section 701 even if it has direct impact upon 'wages, hours and other terms or conditions of employment.' The removal from collective bargaining results not because it necessarily falls within the purview of Section 702 (in fact it may clearly be within the scope of Section 701), but rather because to do otherwise would be in direct violation of a statutory mandate and thus excluded under Section 703 . . . ."

Sabbatical leaves an example

A favorite target of employe bargaining agents has been the various provisions established by statute which regulate sabbatical leaves.

Sections 1166-1167-1168-1169-1170-1171 of the code cover sabbatical leaves of absence: "**Section 1166:** (a) Any person employed in the public school system of this Commonwealth who has completed ten (10) years of service as a professional employe or member of the supervisory, instructional or administrative staff, or as a commissioned officer, shall be entitled to a leave of absence for restoration of health, study or travel, or, at the discretion of the board of school directors, for other purposes. At least five consecutive years of service shall have been in the school district from which leave of absence is sought, unless the board of school directors shall in its discretion allow a shorter time. Such leave of absence shall be for a half or full school term, or for two half school terms during a period of t.) years, at the option of such person: Provided, however, if a sabbatical leave is requested because of the illness of an employe, a leave shall be granted for a period equivalent to a half or full school term or equivalent to two half school terms during a period of two years: Provided further, That if a sabbatical leave for one half school term or its equivalent has been granted and the employe is unable to return to school service because of illness or physical disability, the employe, upon written request prior to the expiration of the original leave, shall be entitled to a further sabbatical leave for one half school term or its equivalent: Provided further, That if a sabbatical leave for a full school term or its equivalent has been granted and the employe is unable to return to school service because of illness or physical disability, the board of school directors may extend such sabbatical leave for such periods as it may determine but not to exceed one

full school term or its equivalent. Thereafter one leave of absence shall be allowed after each seven years of service.

"A sabbatical leave granted to a regular employe shall also operate as a leave of absence without pay from all other school activities. (Amended July 30, 1963, P.L. 358.)"

Section 1167: "Applications for leaves of absence shall be given preference, according to the years of service since the previous sabbatical leave of the applicant, and in accordance with regulations adopted by the board of school directors.

"No school district shall limit the number of leaves of absence granted in any school year to less than ten percentum (10%) of the number of persons eligible for such leave of absence regularly employed in such district. Schools which have a staff of seven (7) or less teachers shall be permitted at least one leave of absence each term. (Amended July 27, 1953, P.L. 629.)"

Section 1168: "No leave of absence shall be granted unless such person shall agree to return to his or her employment with the school district for a period of not less than one school term immediately following such leave of absence.

"No such leave of absence shall be considered a termination or breach of the contract of employment, and the person on leave of absence shall be returned to the same position in the same school or schools he or she occupied prior thereto.

"Upon expiration of a sabbatical leave, by consent of the school board, the requirement that the person on leave of absence shall return to the service of the school district or to the same position in the same school or schools that he or she occupied prior thereto, may be waived. If the school board has not waived the obligation to return to school service upon expiration of the sabbatical leave and the employe fails to do so, unless prevented by illness or physical disability, the employe shall forfeit all benefits to which said employe would have been entitled under the provisions of this act for the period of the sabbatical leave.

"If such employe resigns or fails to return to his employment, unless the requirement to return to service is waived by the board of school directors, the amount contributed by the school directors, the amount contributed by the school district under section 1170 of this act to the Public School Employes' Retirement Fund shall be deducted from the refund payable to such employe under existing law and the amount so deducted shall be refunded to the school district by which it was paid. (Amended September 29, 1959, P.L. 999.)"

Section 1169: "The person on leave of absence shall receive one-half of his or her regular salary during the period he or she is on sabbatical leave. (Amended July 30, 1963, P.L. 358.)"

Section 1170: "Every employe, while on sabbatical leave of absence, shall be considered to be in regular full-time daily attendance in the position from which the sabbatical leave was taken, during the period of said leave, for the purpose of determining the employe's length of service and the right to receive increments, as provided by law.

"Every person on leave of absence shall continue his or her membership in the School Employes' Retirement Association. The school district shall pay into the School Employes' Retirement Fund on behalf of each such employe on leave, in addition to the contributions required by law to be made by it, the full amount of the contribution required by law to be paid by the employe as though said employe were actually in regular full-time daily attendance in the position from which the sabbatical leave was taken so that such employe's retirement rights shall be in no way affected by such leave of absence. The amount of the contribution required to be paid by the employe shall be deducted from any compensation payable to the employe while on leave.

"Nothing in this subdivision of this article shall be construed to prevent any person on leave of absence from receiving a grant for further study from any institution of learning. (Amended July 29, 1953, P.L. 1004.)"

Section 1171: "The board of school directors shall have the right to make such regulations as they may deem necessary to make sure that employes on leave shall utilize such leave properly for the purpose for which it was granted, requiring reports from the employe or employes on leave in such manner as they may deem necessary."

These are the only periods of absence authorized by the School Code except for sections 1176-1181 which deal with leaves of absence tied to military service.

The application of these various provisions of the school laws has been deemed to be nondiscretionary. This has not dissuaded some attempts to try to place into bargaining agreements provisions that would be contrary to the provisions of the statutes.

No discretion

Thus, the following circumstances appear to exist. An employe may obtain a sabbatical leave, at his option, for health, study, or travel purposes after ten years of service in the public schools of the commonwealth. Additionally, five consecutive years of service in the affected district must exist. The board of school directors may not refuse such a request if the service criteria have been met, and if the leave is for the above stated purposes. The board of school directors **may** grant a leave for other purposes which appear will benefit the educational program, and the board **may** reduce the requirement of five consecutive years of service to a lesser number. An employe may additionally obtain a further sabbatical leave each seven years thereafter, at his option, for the above stated purposes. The board of school directors may not reduce either the ten-year or seven-year requirement, just as it may not deny such leave if the stated criteria have been met.

The employe on leave may choose, at his option, a leave of either a half or full school term, or for two half school terms during a period of two years. If the leave is because of illness, a further leave of one half school term or its equivalent shall be granted, and the board of school directors may further

extend such leave **for illness** at its discretion for an additional period not to exceed one full school term or its equivalent.

The salary payment during a sabbatical leave is one-half regular salary. The board of school directors appears to have no option or discretion in this regard.

If you wish to do some further research on this issue, there are a couple of case references which were noted in *School Law Information Exchange*, Volume V, No. 12, May 6, 1968). These are: *Frederick vs. Jenkins Township School District et al.* 82 D&C 593 1952); *Goff vs. Shenandoah Borough School District et al.* 154 Pennsylvania Superior Court 239; *Lazarn vs. School District of Luzerne Township*, 3 Fayette 199. In addition, you may wish to review *School Law Information Exchange*, Volume VIII, No. 20 (July 17, 1970) wherein the Loyalsock Township School District obtained a judgment from Miss M. Louise Stabler for salary and benefits paid while on sabbatical leave when she did not return to the school district after the leave.

If some statement regarding sabbatical leave is necessary to be included in a bargaining agreement, the wisest thing to say is merely that the two parties will abide by the provisions of the School Code in this regard. As can be seen above, the school district has little discretionary power in this area, and would be well advised to reserve such discretion as exists until a case of illness or some other special circumstances requires the exercise of such discretion. At that time, such exercise of discretion should be that which the circumstances dictate.

On January 18, 1972. the Pennsylvania attorney general's office issued the following advisory on sabbatical leaves. (This was included in *Negotiation Guidelines*, Volume II, No. 15.)

> In reply to your inquiry relative to salary on sabbatical leave, please be advised that this is controlled by Section 1169 of the School Code, wherein it is provided that: 'the person on leave of absence shall receive one-half of his or her regular salary during the period he or she is on sabbatical leave.'
>
> There is no discretionary power available to the board in this matter.

The attorney general issued a further opinion on this subject of sabbatical leave (see *School Law Information Exchange*, Volume X, No. 46, for entire text). This later opinion established:

"Sabbatical leave benefits come within the permitted areas for collective bargaining negotiations since they qualify as an element of 'terms and conditions of employment.' However, all of the permitted areas for collective bargaining are subject to the restriction of Section 703 of the act which provides that: 'The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted

the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.' 43 P.S. Sec. 1101.703.

"It is clear that the Legislature intended Section 703 to refer to and to act as a limitation on the areas open for collective bargaining negotiations found in Section 702 of the act, since Section 702 is the only section of the act defining those areas proper for bargaining. Thus, although sabbatical leave benefits come within the permitted areas for collective bargaining negotiations, any provisions of a collective bargaining agreement on sabbatical leave must be examined for a possible conflict with the statutory requirements on that subject. Where a conflict exists, the provisions of the collective bargaining agreement are void and unenforceable.

"Sabbatical leave is an employe benefit created by the Legislature for employes of the public school system, 24 P.S. Section 11-1166 to 11-1171. Certain of the statutory provisions on sabbatical leave are quite specific, stating in detail the requirements for eligibility for granting the leave, and spelling out the benefits that are to be provided while on leave. These nonbargainable provisions are as follows:

(1) To qualify for sabbatical leave, a person must complete 10 years of satisfactory service in the public school system of the commonwealth. 24 P.S. Sect. 11-1166;

(2) Subsequent to the granting of the first sabbatical leave, one sabbatical leave of absence 'shall be allowed after each seven years of service.' 24 P.S. Sect. 11-1166;

(3) To qualify for sabbatical leave, a person must agree 'to return to his or her employment with the school district for a period of not less than one school term immediately following such leave of absences.' 24 P.S. Sect. 11-1168;

(4) A person on sabbatical leave 'shall receive one-half of his or her regular salary' while on sabbatical leave. 24 P.S. Sect. 11-1169; and

(5) Applications for sabbatical leave 'shall be given preference, according to years of service since the previous sabbatical leave of applicant.' 24 P.S. Sect. 11-1167."

Other of the relevant statutory provisions leave the board of school directors of a school district certain areas of discretion. The school board has the discretionary power to grant sabbatical leave for purposes other than those specified; to waive the requirement of five years of consecutive service in the local district; and to extend the sabbatical leave up to one full term where the employe becomes ill while on leave. 24 P.S. Sect. 11-1166. The school board has the discretionary power to make regulations governing the **granting** of the leave (24 P.S. Sect 11-1167) and

requiring compliance with the terms of the leave (24 P.S. Sect. 11-1171). In addition the school board has the power to waive the requirement that the employe must return to service at the completion of the leave. 24 P.S. Sect. 11-1168.

In the case discussed on page 67 where an appeal from an arbitrator's decision was taken to court (where the arbitrator had ruled that the Cumberland Valley School District was required to grant sabbatical leave salary payment at three-fourths of regular salary), the Commonwealth Court overturned the arbitrator's award and determined that school districts had no authority to exceed the one-half salary for sabbatical leave provided in the School Code.

Sabbatical leaves are not the only statutory benefits that have been subjected to pressure and attack by employe groups. Retirement fund provisions of law and provisions affecting unemployment compensation were also assaulted by union bargaining agents in efforts to use statutory directives as a base from which to bargain added benefits. Neither of these items are subject to discretionary control by a public employer.

Credit not allowed for service after retirement

An attorney general opinion addressed the issue of credit in the retirement system for service rendered after retirement. Said the opinion:

> Section 102 (23) defines 'final average salary' as the 'highest average annual compensation of a contributor as a school employe during any five nonoverlapping periods of 12 consecutive months of contributory service.'
>
> If an employe retires at the end of a school year, it is clear that the contributory service terminates when that year ends and cannot include periods of service rendered subsequently or compensation earned during such vacation periods. It is anomalous to be employed, receive credit and simultaneously be retired from school service. Furthermore, vacation periods are available only for additional compensation credits and not for additional service because such service is not 'full time' service for retirement purposes.

Editor's Note: Act 119 of 1974 changed the determination of 'final average salary' to three years rather than five. Act 96 of 1975 recodified the Retirement Code and made substantial additional changes. However, the effect of this opinion remains regarding no credit for service after retirement.

Credit not allowed for retirement on severance payments

In another Attorney General opinion, the issue of credit for severance pay was discussed. Said the opinion:

"You have requested clarification of the term 'compensation,' as it is defined in Section 102 (20), insofar as lump sum severance payments which may represent bonuses for accrued sick leave or other forms of fringe payments are concerned, and whether those forms of payments qualify as 'compensation,' so as to be used to increase final average salary and thereby enhance retirement benefits.

"As you know, an opinion was issued by the attorney general several years ago, which concluded that lump sum payments representing accrued sick leave for retiring teachers did not offend the Public School Code and could be granted by a school board. That opinion was based on the then apparent teacher shortage and was used as a device to encourage teachers to seek employment and to remain in a school district in a career capacity. (*Note: There has been substantial disagreement with the opinion referenced here as to whether or not such a retirement bonus payment constituted a gift, and, as such, exceeded the authority of public officials. PSBA studied the opinions in other states where such issues had been raised. It was found that in almost all cases where such an opinion had been rendered, the attorney general or court of that state had ruled that such retirement bonuses were not permissible. Certain common pleas court judges have also expressed a similar view during certain impasse situations that have gone before such courts, but no court ruling has been rendered to date which would change the attorney general opinion referenced here, see however, note at end of this section.*) That opinion had no applicability to increasing retirement benefits and was limited only to whether these lump fringe benefits could be paid. Although 'compensation' is defined as all forms of compensation, the device of applying severance payments representing unused sick leave or unused vacation would, in effect, grant additional payments for the same service time insofar as retirement credits are concerned, and would be improper.

"If such payments were accepted to increase retirement benefits, then unequal treatment would be accorded retiring teachers who may have had different health patterns during their tenure of employment. The retirement program is based on uniformity of benefits among the same class of employes and to give one retiring teacher with the same service and salary one benefit and another retiring teacher a greater or lesser benefit because of accrued sick leave payments for the same service time would not only be inequitable but discriminatory. Nothing in the law suggests that conclusion, express or implied.

"Furthermore, the entire salary structure is based on a contract based on a certain number of days employed as well as days used for vacation or sick leave. To change the terms of the contract would serve only to give additional salary credits for teachers in similar salary ranges and, in essence, give additional unauthorized, and extra benefits for the same service . This is improper. Cf. *State Employe's Retirement Board vs. O'Brien*, 93 Dauph. 101 (1970). Therefore, a school board's decision to make bonus or severance payments is within its purview but those payments are not includable for retirement purposes, in the absence of

specific legislation. The use of fringe benefit payments to increase benefits must specifically be authorized. Furthermore, payments of this type would substantially increase benefits of teachers far in excess of the contemplated costs now used for determining the liabilities of the employer and beyond the contemplation of the Legislature when it established and updated the uniform retirement program." (*Note: A report by the actuary for the School Employes Retirement Fund has indicated that any provision which would permit credit for retirement benefit purposes of such bonuses would cost local school districts and the commonwealth about $8 million per year based on present payrolls. Note, also, that the rules and regulations adopted by the retirement board for the implementation of Act 96 of 1975 continues the prohibition against use of severance payments as a base for retirement benefits.*)

Retirement fund payments

School districts have been asked to bargain about how School Employes Retirement Fund payments are made by local school districts. **This is not a bargainable subject, but is strictly controlled by statutory provisions over which school districts and employes have no discretion** except for the options provided for employes as to how benefits will be paid and certain other options associated with purchase of prior service.

Some of the things that have been suggested are:

1. The employer to pay both the employe's and employer's share of contributions to the Retirement Fund. **Neither employer nor employe has any option this regard under the law.** The employe must make his respective contribution, and the employer must do likewise.

2. The employer to double, or otherwise increase, the employer contribution to the retirement fund, with the employe continuing to make contributions at the statutory required level. Again, **the employer has no discretion as to the level of payment to the fund that the employer will make.** School district payments must be made at only the statutory rate of contribution as established by the retirement board.

3. The employer to purchase credit for prior service, or out-of-state service, on behalf of the employe. The employer, again, is bound by the statutory provisions of the retirement law. Employes can buy prior service, or out-of-state service, under certain conditions. The retirement system **cannot accept such payments from employers on behalf of employes.** Naturally, employers can increase the salary of employes to an amount which would include a sum that would allow the employe to do this. By so doing, however, this becomes taxable income to the employe, and both employer and employe would be required to pay the mandated retirement system contributions on this total amount.

Unemployment compensation entitlement and payments

Generally, school districts and school district personnel are not covered by unemployment compensation. This general exclusion has been

affected, in some instances, by special federal subsidies that were designed to provide stipulated benefits for periods of no work of an involuntary nature.

Act 108 (HB 980 of the 1971 session) did make substantial changes in the Pennsylvania Unemployment Compensation Law. In addition to changing the level of benefits under the law, Act 108 also affected who is covered under the law.

Section 4 of the act, subsection (8) (c), establishes that service performed "in the employ of a school which is not an institution of higher education" is not covered service. Therefore, employment in local districts and their equivalent counterparts which are not institutions of higher education is not covered employment under the Unemployment Compensation Law. **School districts are not required to make payments for such purposes, and have no option available to them as to whether or not they can provide such a benefit.**

Section 1201 of Act 108 does provide for an option by political subdivisions of the commonwealth whereby, in certain instances, the political subdivision may elect to cover service performed by certain classes of employes. This option does not apply to local school districts.

Personal leave and sick leave

Another area of bargaining contract provisions where the effect of statutes come into play has to do with sick leave and personal leave, high priority bargaining items.

Proposals regarding sick leave and personal leave are frequently identified as key items. The following provisions of the School Code may help bring these into focus.

Section 1153 of the code says: "Whenever a teacher is prevented by sickness or some other unavoidable circumstance from following his or her occupation, the school district may, at the discretion of the directors, make such payments of compensation during the period of absence from duty as the exigencies of the case may seem to warrant. In the case of sickness, no payments shall be made unless the teacher shall have furnished to the board of school directors a certificate from a physician stating the nature of the sickness and certifying that he or she was unable to perform duties as a teacher."

Section 1154 says: "(a) In any school year whenever a professional or temporary professional employe is prevented by illness or accidental injury from following his or her occupation, the school district shall pay to said employe for each day of absence the full salary to which the employe may be entitled as if said employe were actually engaged in the performance of duty for a period of 10 days. Any such unused leave shall be cumulative from year to year in the school district of current employment or its predecessors without limitation. All or any part of such accumulated unused leave may be taken with full pay in any one or more school years. No employe's salary shall be paid if the accidental injury is incurred while the employe is engaged in remunerative work unrelated to school duties.

"Whenever the boards of school directors of two or more school districts may establish any joint elementary public school, high school or department, or whenever two or more school districts shall merge or form a union school district or administrative unit in accordance with the provisions of sections 291, 292, 293, 294, 295, 296, and 297 of this act, the professional or temporary professional employes employed by the several boards of school directors establishing such joint school or department or merged or union school district or administrative unit shall be entitled to the sick leave accumulated in the individual school districts subsequently establishing such joint school or department or merged or union school district or administrative unit.

"The board of school directors may require the employe to furnish a certificate from a physician or other practitioner certifying that said employe was unable to perform his or her duties during the period of absence for which compensation is required to be paid under this section. (Amended January 19, 1968, Act No. 437.)

"(b) Whenever a professional or temporary professional employe shall be absent from duty because of a death in the immediate family of said employe, there shall be no deduction in salary of said employe for an absence not in excess of three school days. The board of school directors may extend the period of absence with pay in its discretion as the exigencies of the case may warrant. Members of the immediate family shall be defined as father, mother, brother, sister, son, daughter, husband, wife, parent-in-law or near relative who resides in the same household, or any other person with whom the employe has made his home.

"(c) Whenever a professional or temporary professional employe is absent because of the death of a near relative, there shall be no deduction in the salary of said employe for absence on the day of the funeral. The board of school directors may extend the period of absence with pay in its discretion as the exigencies of the case may warrant. A near relative shall be defined as first cousin, grandfather, grandmother, aunt, uncle, niece, nephew, son-in-law, daughter-in-law, brother-in-law, or sister-in-law. (Amended December 22, 1965, P.L. 1180.)

"(d) All compensation required to be paid under the provisions of this act shall be paid to the employe in the same manner and at the same time said employe would have received his salary if actually engaged in the performance of his duties.

"(e) Any board of school directors may adopt rules or regulations pertaining to the payment of salaries of employes when absent from duty, extending the period of leave with or without pay in excess of that herein provided, or authorizing leaves with pay for other purposes. This act is not inended to repeal any rule or regulation of any board of school directors now in effect which does provide for such additional compensation or additional period of leave with pay. (Amended December 22, 1965, P.L. 1180.)"

As sick leave provisions in collective bargaining agreements became more blatantly violative of what appeared to be the original design and

intent of the statutory provisions, PSBA General Counsel William A. Fearen wrote the following commentary, which appeared in the November-December, 1972, issue of the *PSBA Bulletin* "It's The Law" column.

"The Prostitution Of Sick Leave
A Legal And Moral Issue"

A survey conducted by PSBA indicates that approximately 73 percent of all school districts in the commonwealth of Pennsylvania have some sort of a policy or contractual obligation with their professional staff to pay to a professional employe, upon retirement, a certain stipulated amount for each day of unused sick leave. A typical provision would be one entitling an employe to the sum of $10 per day for unused sick leave, with a maximum of $1,000.

In addition to the "payment at retirement" concept, other less common manipulations of the use of sick leave have been popping up in collective bargaining agreements across the state. For instance, one agreement provides that for each 10 days of accumulated sick leave the employe gets a bonus day which is evidently similar to a day of personal leave. Another collective bargaining agreement provides for the creation of a sick leave bank into which professional employes "deposit" their unused sick leave and then withdraw it in accordance with rules and regulations promulgated by the teachers' association.

No doubt, many of these arrangements for the manipulation of sick leave have been formed by, or have been justified by, an opinion issued on July 12, 1968, by Deputy Attorney General Warren G. Morgan (now a Common Pleas Judge in Dauphin County) in which he advised the Superintendent of Public Instruction that a school district could properly incorporate in its salary schedule a provision for the payment of unused sick leave. This Attorney General's opinion was apparently motivated by two factual propositions which were expressed in some detail in the opinion: namely, (1) it would be very expensive for a school district to have to pay for substitutes if every teacher used the full amount of his sick leave, and (2) the offer to pay for unused sick leave was justified as an inducement to be offered by school districts in the recruiting of teachers, since at the time the opinion was written, there was evidently a scarcity of available classroom teachers.

It is respectfully suggested that the above analysis and the increasingly prevalent practice of paying unused sick leave benefits, is both morally and legally wrong. While this column is not ordinarily devoted to moral issues, it seems to me that the rationale, upon which these sick leave payoffs are traditionally based, is morally indefensible and is deserving of some critical examination. At any bargaining session in which the demand is made, it is customarily justified by the suggestion that it will be cheaper for the school district if teachers do not use their sick leave, and by the further suggestion that the absence of a policy requiring payment for unused sick leave will almost certainly guarantee

that the sick leave will in fact be used and not be accumulated. It seems to me that both of these propositions are wholly lacking in moral merit and common sense. The purposes for the Legislature having granted sick leave benefits to professional employes are obvious:

- **To relieve any possible economic burden on a professional employe who was ill.**
- **To protect school children from the necessity of being exposed to a teacher with an illness which might be communicated to them.**
- **To obviate the problem of teachers performing at a low level of proficiency by reason of an incapacitating illness.**

A contractual provision designed to encourage teachers who are ill to appear in classrooms serves none of these ends.

In the final analysis, I suppose everyone who wants to be realistic about this matter recognizes that the real purpose of such a provision is to offer some inducement to school teachers to be honest about the use of sick leave. Even negotiators privately admit that, in the absence of such a provision, teachers are likely to take sick leave when they are not sick so that they can "use up" all of the benefits to which they are "entitled" under the law. To recognize such a fact, and to acquiesce in it, amounts to an agreement on the part of the school district to pay some sort of a premium for the purchase of honesty on the part of the professional staff. School districts should not have to buy integrity and, when it is offered for sale, it is a slap in the face to those professional employes who have "played it straight" for years.

Aside from the moral issue, there is considerable question as to whether such arrangements are in fact legal. In approving an arrangement to pay teachers for unused sick leave, the aforesaid attorney general's opinion was based upon the following considerations:

- **It would save the school district money for the reasons hereinabove stated.**
- **Section 501 of the code makes the school district responsible for educating all persons of school age.**
- **The school district has an obligation to hire a staff of teachers.**
- **The offer to pay for unused sick leave is a desirable inducement in the recruiting of teachers.**

With this as a background, the attorney general in reliance upon *Harris vs. the Phila. Board of Education*, 22 D&C 15, concluded, that since the act was not specifically forbidden by the code, it must impliedly be authorized thereunder.

The case relied upon by the attorney general involved a contract between the school district and the Philadelphia Zoo for the admission of school children, and the court there held that the school board under its general powers has the right to contract to send these children to the zoo

because there was an education purpose served thereby. This is a far cry from the problem to which the present inquiry is addressed. Section 501 of the code provides:

> The Board of Directors in every school district shall establish, equip, furnish and maintain a sufficient number of elementary public schools in compliance with the provisions of this Act to educate every person residing in such districts between the ages of 6 and 21 years who may attend.

This section has been interpreted by the courts to vest wide discretion in school boards to administer the school system, and the courts have held that they will not interfere with the administrative discretion of school boards in determining educational policies so long as the school boards act within the scope of their statutory authority and in good faith. *Reagen vs. Stoddard*, 361 Pa. 465, (1949). The discretion of school boards in this regard has been reviewed as recently as 1971 by the Commonwealth Court in *Allen vs. Uniontown Twp.*, 4 Comm. Ct. 183 where the Court said:

> The burden of showing to the contrary when the action of a school board is challenged with respect to matters committed to its discretion, is a heavy one; for the power of the courts in such cases is exceedingly limited; and they are permitted to interfere only where it is made apparent that it is not discretion that is being exercised but arbitrary will or caprice. Discretion involves the exercise of judgment incidental to the proper performance of the duty delegated. When the contention is that the proposed action is unwise, no matter by what concensus of opinion this is shown, the law will refer it to mistaken judgment over which it (the law) has no supervision. But it cannot be so referred, if the facts admit of no other conclusion than that the determination of the board has been influenced by other considerations than the public interest, no matter what these may have been, the law will regard it as an abuse of power, a disregard of duty, and it becomes the duty of the court to interfere for the protection of the public. (See also *Hibbs, et al vs. Arensburg*, 276 Pa. 24; *Lamb vs. Redding*, 234 Pa. 481; and *Reagen vs. Stoddard*, 361 Pa. 465.)

What is important for our purposes is that all of the cases just referred to dealt with the exercise of discretion of the board in building buildings, awarding building contracts and establishing courses of instruction, and in all of the cases the discretion of the board was sustained. The distinction between those cases and the instant question is clear; namely, that there really is no educational purpose served by the exercise of discretion in a manner to require payment for unused sick leave. Where this direct educational element is lacking, the courts take a much different view. Thus in *Barth vs. Phila. School Dist.* 393 Pa. 557, the Supreme Court struck down an agreement to operate a program to curb juvenile delinquency saying:

A study, nay a reading, of the Public School Code demonstrates that the legislature unquestionably intended and provided that the school district could possess and exercise only those powers and functions detailed in the Code, and that public school funds could be used only in the manner and for the purposes which are expressly or by necessary implications provided for in this detailed Act.

In that connection, the subject of teacher benefits is elaborately set forth in the School Code. The code sets a 10-day limit on sick leave and provides that it is cumulative, but does not mention any authorization to pay for unused sick leave which is accumulated. The code also covers the compensation of teachers in significant detail and provides an elaborate retirement system which extends to teachers a wide range of benefits. Notwithstanding the detail with which the School Code treats the compensation and benefits available to teachers, there is not one word which either authorizes a payment for unused sick leave or from which, in this writer's view, such an authorization could reasonably be implied. The most elementary course in the construction of statutes or contracts includes an understanding of the Latin maxim, *expressio unius est exclusio alterus*. This means simply that where certain things are specified in a law, an intention to exclude all other things from its operation may be inferred. From this basic concept of the law, one might reasonably conclude that where the Legislature provided elaborate details for the salary, fringe benefits and retirement program for teachers, it thereby intended that school boards should have no further power to expand retirement benefits beyond those specifically provided. Such a conclusion finds support in the fact that the payment for unused sick leave has only the remotest connection with the educational process and beyond that raises those serious moral issues referred to above.

In those districts where a payment for unused sick leave has been adopted as policy or included in a collective bargaining agreement, these benefits are not only made available to newly hired teachers, but are regarded as being especially important to those teachers of long tenure who are approaching retirement age. As applied to this latter group, the arrangement may very well be constitutionally offensive. Article III, Section 26, of the Constitution provides:

> No bills shall be passed giving any extra compensation to any public officer, servant, employe, agent, or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim against the Commonwealth without previous authority of law: **provided, however, that nothing in this Constitution shall be construed to prohibit the General Assembly from authorizing the increase of retirement allowances or pensions of members of a retirement or pension system now in effect or hereafter legally constituted by the Commonwealth, its political subdivisions, agencies, or instrumentalities, after the termination of the services of said member.**

The part of the constitutional provision which is **underscored** is a 1955 amendment to the Constitution which was required because the Supreme Court of Pennsylvania in *Jameson vs. Pittsburgh*, 381 Pa. 366 held that a statute providing for additional retirement benefits was unconstitutional because it amounted to giving extra compensation to a public employe after services had been rendered. In other words, it is clear from the above constitutional provision that the Legislature itself would be without power to increase the benefits available to school teachers as a result of services already rendered. Once sick leave has been accumulated by a professional employe, the adoption of a policy, contractual provision or a law providing some additional pay in connection with unused sick leave would be equivalent to conferring an additional benefit upon a professional employe arising out of services which have already been rendered. If the Legislature is under a constitutional disability to pass a law conferring additional compensation upon a public employe for past services, it seems reasonable to speculate as to whether a school district which is a creature of the Legislature and which exercises only such powers as the Legislature may delegate to it, would not be under a similar disability. Surely it cannot be contended that the Legislature itself can circumvent its constitutional disability by delegating to a school district either the right or the duty to perform an act from which the Legislature itself is constitutionally barred.

* * *

Note: As this publication goes to press, the auditor general has attacked the practice of paying for unused sick leave. In c legal memorandum on this practice, he said:

"1) Payments made to a school employe (administrator, custodian, officer, secretary or teacher), who terminates his employment with a school district for any reason, including, but not limited to: retirement, resignation, or dismissal, computed on the basis of unused accumulated sick leave, whether included in the teacher's final year's salary or paid in a lump sum, is unauthorized by The Public School Code.

"It is our opinion that payments for sick leave, authorized by Section 1154 of The Public School Code, 24 P.S. 11-1154, may be made only when the employe is unable to pursue his occupation by reason of illness or disability, and for no other reason.

"2) Payments made to a retiring teacher computed on the basis of years of service in a particular school district, which are included in the employe's final years salary or any portion thereof, are authorized by The Public School Code.

"It is our opinion that such payments would be authorized by Section 1151 of The Public School Code, 24 P.S. 11-1151, which grants school boards the discretionary authority to increase the salary of specified employes at any time during the term such persons are employed.

"3) Payments to a retiring employe computed on the basis of years of service in a particular school district, which are made after the employe has retired, are not authorized by The Public School Code.

"It is our opinion that such payments are neither a salary increase, within Sections 1151 and 1152 of The Public School Code, 24 P.S. 11-1151 and 11-1152, nor a service increment within Section 1152, since payments are made after termination of employment.

"4) In the event that an employe, who is receiving a retirement pay based on years of service as part of his salary, should die before the effective date of retirement, payment of the remaining balance of such retirement pay to the employe's surviving spouse, designated beneficiary or estate, as the case may be, is not authorized by The Public School Code." (See *School Law Information Exchange*, Vol. XIII, No. 38 [May 17, 1976]).

The effect of other statutes

Coupled with efforts to subject various statutes to control of collective bargaining agreements, there has arisen a whole series of school law cases flowing out of acts 405 and 96.

Listed below is a bibliography of certain references that will be helpful to school districts confronted with problems growing out of the interpretation and application of Act 96. Especial attention is directed to references 11 and 14, since it appears that school districts should be carefully reconsidering the future problems that salary schedules represent under present law.

1. *School Law Information Exchange,* Vol. V, No. 20, (June 21, 1968), *Welsh vs. the Wilkes-Barre Board of Education.*
2. School Administrator's Memorandum 100, July 9, 1968.
3. *School Law Information Exchange,* Vol. V, No. 36, (November 22, 1968), a memorandum by Charles H. Coffroth, Esq.
4. School Administrator's Memorandum 157, May 14, 1969.
5. *Information Legislative Service* , Vol. VI , No. 21, (May 29, 1969), recital of School Administrators Memorandum 156, 157 & 158.
6. *School Law Information Exchange,* Vol. VI, No. 34, (September 8, 1969), brief for Central Cambria School Distrtict.
7. *School Law Information Exchange,* Vol. VI, No. 34B, (October 10, 1969), *Baldacchino et al vs. Central Cambria School District.*
8. *School Law Information Exchange,* Vol. VII, No. 12, (April 29, 1970), *Baldacchino et al vs. Central Cambria School District.*
9. *School Law Information Exchange,* Vol. VII, No. 15, (May 29, 1970), *Sabelesky vs. Wyoming Valley West School District.*
10. *School Law Information Exchange,* Vol. VII, No. 17, (June 3, 1970), *Baldacchino vs. Central Cambria School District.*
11. *School Law Information Exchange,* Vol. VII, No. 27, (September 25, 1970), *Kautter et al vs. Wyoming Valley West School District.*

12. *School Law Information Exchange*, Vol. VII, No. 42, (December 18, 1970), briefs filed in the *Baldacchino et al vs. Central Cambria School District*.
13. *School Law Information Exchange*, Vol. VIII, No. 12, (April 7, 1971), *Baldacchino vs. Central Cambria School District*, Superior Court decision.
14. New Methods of Setting Salaries, January-February 1972, *PSBA Bulletin*.

Impasses

Impasse resolution under Act 195

The weakness originally pointed up by PSBA in Act 195 which allowed too little time for original negotiations has turned out to be one of the most troublesome features of the act during the first years of operation. Impasses have been precipitated at an undue rate, choking up the entire impasse resolution mechanism provided in the act.

Minimum schedule for impasse

The timetable for the collective bargaining impasse begins essentially with the wording of Section 801 of Act 195. It says: " . . . if no agreement is reached between the parties within 21 days after negotiations have commenced, but in no event later than 150 days prior to the 'budget submission date,' and mediation has not been utilized by the parties, both parties shall immediately, in writing, call in the service of the Pennsylvania Bureau of Mediation." Section 802 then sets out a period of 20 days for mediation. This section also places upon the labor board the responsibility for the possible appointment of a fact-finding panel after mediation has been utilized. The length of time for the process of fact-finding is 40-days. Under the same section, further provisions are made after the 40-day fact-finding period for both parties to accept or reject findings and recommendations within 10 days. And, an additional 10-day limitation is provided for publicizing the findings and recommendations of the fact-finding panel.

In effect, then, a **minimum of 101 days** must elapse from the time negotiations begin until all of the steps of the impasse procedure are exhausted. No employe organization can legally go on a strike within that 101-day period. Even if the labor board, in the process, elects not to appoint a fact-finding committee, the board is not relieved of this responsibility for this period of time nor can it pass its responsibility onto another party. The time schedule in the law is explicit and requires the minimum of 101 days to elapse from the time negotiations commence until a legal strike can be held by the employe organization.

Impasse not necessary after 21 days

Starting with Section 801, "the period leading up to mediation," it is unreasonable to assume that all employer and employe organizations will necessarily reach impasse after 21 days. To comply with the law, the local board should merely notify the Labor Relations Board that 21 days of negotiations have lapsed, that the board and the employe union are continuing good faith bargaining and further, that neither side has declared an impasse. Once that initial notification has been made to the Labor Relations Board, and if an impasse is then subsequently declared, the party wishing to notify the Labor Relations Board of such impasse would then seek to call in the services of the Pennsylvania Bureau of Mediation through additional notification on form LIMS-103 (see form below).

PSBA NOTE: This form is not to be used for bargaining unit determination. Bargaining unit determination is not a matter for the impasse procedure in Act 195. Section 801, Act No. 195 of 1970 states "... the parties may voluntarily submit to mediation but if no agreement is reached between the parties within twenty-one [21] days after negotiations have commenced, but in no event later than one hundred fifty [150] days prior to the 'budget submission date', and mediation has not been utilized by the parties, BOTH PARTIES SHALL IMMEDIATELY CALL IN THE SERVICE OF THE PENNSYLVANIA BUREAU OF MEDIATION." This is to be done in writing, submitting threee [3] copies to the Bureau. Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement.

Form
LIMS-103 (10-70)

Commonwealth of Pennsylvania
Department of Labor and Industry
Bureau of Mediation

Date _____
File No. _____
(Office use only)

ACT 195
MEDIATION NOTICE

(This Notice May Be Filed Jointly or Separately)

Department of Labor and Industry
Bureau of Mediation
1602 Labor and Industry Building
Harrisburg, Pennsylvania 17120

Gentlemen:

In accord with the provisions of Section 801 of the Public Employe Law,

Act No. 195, of 1970 you are hereby notified that a dispute exists between the following parties:

Name of Public Employer	Name of Employe Organization, Local No.
Street or Rural No.	Street or Rural No.
Municipality County	Municipality County
Name and telephone number of Employer Representative	Name and telephone number of Employe Representative
Predominant work activity affected	Number of employes in bargaining unit

Budget submission date*

Filed in Behalf of: _____ Employer Representative

Filed in Behalf of: _____ Employe Representative

*Budget submission date is the last day of the fiscal year of the Public Employer, except for the Commonwealth which is February 1, of each year.

Mediation

Section 802 of the law says: "Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within 20 days after mediation has commenced, or in no event later than 130 days prior to the 'budget submission date,' the Bureau of Mediation shall notify the board (labor board) of this fact."

The key phrase in this part of Section 802 is "once mediation has commenced," meaning in fact, the first time that a mediator is present and in session with the board and the employe union. From that time on, 20 days need to be counted.

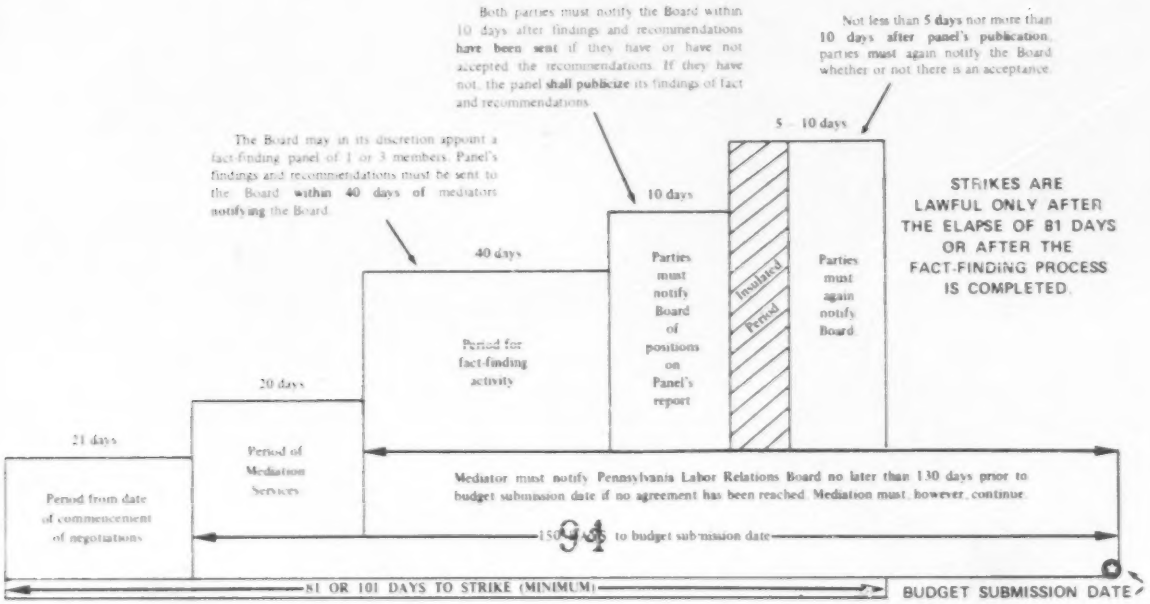
The chart on page 94 presents the various segments of time set forth in the act for negotiation and impasse procedures. It should be noted that both parties are expected to carry on good faith negotiations throughout this period until such time as an agreement has been reached. Failure by the employer to do so can be construed as an unfair practice. Likewise, failure by the employe organization to do so is also an unfair practice. In addition, action by the employe organization to engage in a strike during this period is illegal and prohibited by the act. Only after all of the impasse procedures set forth in the act, and shown on the chart, have been utilized may a legal strike take place. Even then, the strike may be enjoined by the court if it can be shown that the "strike creates a clear and present danger or threat to the health, safety or welfare of the public."

The time schedule set forth as shown in the chart is the minimum time schedule provided in the act. For example, there are not just 20 days

TIME PERIOD INTERVALS FOR THE IMPASSE PROCEDURE

A schematic diagram of the time period intervals in Article VIII, Collective Bargaining Impasse, of the Pennsylvania Public Employee Relations Act (ACT 195). Section 801 requires notification to the Pennsylvania Bureau of Mediation after 21 days if agreement has not been reached. See Negotiation Guideline 2-8-71-8, "Collective Bargaining Impasse," for a more complete analysis of the impasse procedure.

The term "Board" when used herein means the Pennsylvania Labor Relations Board


Both parties must notify the Board within 10 days after findings and recommendations have been sent if they have or have not accepted the recommendations. If they have not, the panel shall publicize its findings of fact and recommendations.
Not less than 5 days nor more than 10 days after panel's publication, parties must again notify the Board whether or not there is an acceptance.
5 – 10 days
The Board may in its discretion appoint a fact-finding panel of 1 or 3 members. Panel's findings and recommendations must be sent to the Board within 40 days of mediators notifying the Board.
10 days
40 days
Parties must notify Board of positions on Panel's report
Insulated Period
Parties must again notify Board
STRIKES ARE LAWFUL ONLY AFTER THE ELAPSE OF 81 DAYS OR AFTER THE FACT-FINDING PROCESS IS COMPLETED.
Period for fact-finding activity
20 days
21 days
Period of Mediation Services
Period from date of commencement of negotiations
Mediator must notify Pennsylvania Labor Relations Board no later than 130 days prior to budget submission date if no agreement has been reached. Mediation must, however, continue.
150 days to budget submission date
81 OR 101 DAYS TO STRIKE (MINIMUM)
BUDGET SUBMISSION DATE

available for mediation, but a minimum of 20 days of mediation must take place. Thus, the minimum 20-day period of mediation begins upon presentation — in person or otherwise — of a mediator to begin the process. This may begin immediately upon notification to the Bureau of Mediation Service or some time later. In any event, both parties are obligated to this time schedule and a legal strike may not take place until all of the impasse procedures provided have been exhausted.

A mediator should not serve as a negotiator for either party. This is not his function. His actions should have the same force upon both parties. He should not be allowed to serve as an extension of the other party's negotiating efforts, and mediation should not be permitted to become another negotiating tool available to the other party. **Mediation should be viewed as a process whereby a neutral third party endeavors to find possible ways of resolving an impasse on mandated bargainable subjects which may be voluntarily acceptable to the two parties and which they themselves may not have considered or may not have deemed acceptable.** Neither party is under any compulsion to accept any recommendation arising out of mediation. But don't overlook the fact that good faith bargaining is expected throughout the process and mediation, once begun, is expected to continue until an agreement is reached.

Fact-finding panel appointment

Section 802 further states: "Upon receiving such notice, the board (Labor Board) may, in its discretion appoint a fact-finding panel which panel may consist of either one or three members. If a panel is so designated or selected it shall hold hearings and take oral or written testimony and shall have subpoena power. If during this time the parties have not reached an agreement, the panel shall make findings of fact and recommendations." You will notice that in this paragraph, it is discretionary upon the part of the board to either appoint or not appoint a fact-finding panel. Whether or not a fact-finding panel is employed does not erase or nullify the requirement of a period of 40 days of fact-finding. And the lapse between the time that the Bureau may notify the Labor Board and actual notification takes place could be an undetermined period of time. In no event shall the process of fact-finding or a substitute process in lieu of fact-finding be any less than 40 days.

Section 802 also prescribes that the employer and employe group have 10 days to accept the findings and recommendations of the fact-finding panel, and if they do not do so in that period of time, they have an additional limit of 10 days to make the findings of fact public. This then constitutes a total of 20 days after fact-finding is concluded.

Fact-finding may be viewed as an effort by neutral third parties [or third party] to assemble facts and to make recommendations based upon these facts, which may help the parties voluntarily reach an agreement which they may not otherwise reach if such facts and recommendations were not set forth.

Fact-finders are not interpreters of the act. Fact-finding should have equal force upon both parties and should not be allowed to become an

extension of the bargaining efforts of either party. **It is not an additional bargaining tool available to employes or employers and should not be permitted to become so.**

The hearing and assembly of facts incidental to this process is usually a formal procedure and may be expected to generally include an attorney as a hearing examiner. It is incumbent upon the school district to be prepared to present facts supporting data which bear upon the impasse at hand. In its personnel surveys and other published data, PSBA has furnished a large amount of material useful for fact-finding procedures. Generally, the body of existent data available to a school district pertinent to such proceedings will help a district counter the demands that employe organizations may make.(Note: PSBA stands ready to help every school district confronted with fact-finding, or the possibility of fact-finding, through the furnishing of data pertinent to such proceedings.)

Neither fact-finders nor mediators should be permitted to establish public policy by their treatment of non-bargainable items considered within the scope of Section 702 of the act. Their roles are to help effect agreements on bargainable issues included in the scope of Section 701 of the act. It is likely that after it is recognized that mediation and fact-finding are not additional bargaining tools, especially in the area of policy matters, these procedures will be used as intended — to help reach agreements on issues that are basically economic in nature.

Lapsed time between mediation and fact-finding

Essentially, if this timetable is followed, not considered is the time lapse between notification of the Bureau of Mediation for mediation services and the arrival of the mediator, nor is counted the lapse of time from notification to the labor board by the Bureau of Mediation and the appointment of a fact-finding panel. Discounting these two lapses of time, a minimum of 101 days is required from the first time negotiations are entered into until the impasse procedure is exhausted.

Therefore, under the explicit provisions of the act no employe union can engage in a legal strike prior to the expiration of 101 days from the original session of negotiations between the board and the union. Undoubtedly, recalling the two lapsed time periods, this could be considerably more than 101 days.

Impasse procedure before legal strike

The question may arise, what happens if the labor board does not designate a fact-finding panel? This does not absolve the labor board of its responsibility to properly carry out the impasse procedure, nor does it provide any special privilege for an employer or an employe group to circumvent the impasse procedures prescribed in law. No strike should take place prior to the expiration of a minimum of 101 days from the time negotiations commence; and further, no strike should be considered a legal strike until all of the impasse procedures have been exhausted, including the decisions regarding a fact-finding panel. Quoting Section 1003 of the

law, this section states: "If a strike by public employes occurs after the collective bargaining processes set forth in sections 801 and 802 in Article VIII of this act have been completely utilized and exhausted it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public. . . . ."

Unfair practices

During the first years of operation of Act 195, employe agents resorted to the use of unfair labor practice charges to a much greater degree than did employers. Thus, rather expectedly, employe organizations fared better than employers in using such charges to their own special interests. However, employers are beginning to make more frequent use of unfair labor practice charges.

Provisions on unfair practices

Article XII, Section 1201 of Act 195 recites nine provisions which constitute unfair practices by both employers and employe organizations. You are reminded to review all of these provisions in order to fully understand the basis upon which unfair practice charges may be made. Article III, Section 301 (8) of the act limits "unfair practice" definition to these provisions of Section 1201.

Article XIII of the act gives the Pennsylvania Labor Relations Board (PLRB) exclusive power to "prevent any person from engaging in any unfair practice listed in Article XII of this act." This article also outlines the procedures the PLRB shall use in making determinations. In addition, Article XIV empowers the PLRB to petition a court of competent jurisdiction for appropriate relief or restraining order arising from "the commission of an unfair labor practice committed during, or arising out of the collective bargaining procedures set forth in sections 801 and 802 of Article VIII of this act." **The filing of an unfair practice charge by an employer (school district), or the defending against an unfair practice charge made by an employe organization, is a technical procedure wherein qualified legal counsel should be utilized even though a specialist in labor relations may also be desired.**

Specific infractions

Unfair practices under the act are not generalized statements. Instead they are specific infractions of one or more of the provisions of Section 1201 of the act — nothing else. In defending against alleged unfair practices claimed by employe organizations, it is imperative that the claimants be required to cite the specific provisions of Section 1201 under which the claims arise. Most generally, such charges will likely stem from Sections 1201 (a) (5) "Refusing to bargain collectively in good faith" or 1201 (a) (9) "Refusing to comply with the requirements of meet and discuss." (Read again Section 301 (17) defining meet and discuss.)

In defending against unfair practice charges by employe organizations, keep in mind that meet and discuss, under the act, is not

expected to embrace all matters which may be raised by either party. It is expected to be limited to "meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon" (last sentence Section 702 of Act).

In other words, employers are required to meet and discuss only on policy matters related to bargainable subjects included in Section 701 of the act, but are not required to bargain on such policy matters. **Neither mediators, fact-finders nor the PLRB are authorized to force bargaining on such matters. So long as meet and discuss requirements are met, this cannot be construed as an "unfair practice."** Obviously, failure to bargain on Section 701 subjects can be considered an unfair practice.

School districts can file, too

School districts, when hung up on negotiations by employe organizations, may also file unfair practice charges and should carefully consider taking such action if violations by the employe organization of the provisions of Section 1201 [b] of the act can be shown. Don't overlook the fact that failure of the employe organization to accept the decision of the employer on a meet and discuss item is an unfair practice.

Nothing is to be gained by either the employe organization or the employer in unnecessarily instituting unfair practice charges. On the other hand, these provisions of the act are there for the proper protection of both the employe organization and the employer.

Strikes

An earlier section of this book has reviewed the strike experience under Act 195 during its first years of existence. In comparing the Pennsylvania experience under the act with that of all of the rest of the nation combined, it must be fairly said that the "limited right to strike" designed into Act 195 became the vehicle for bringing to Pennsylvania a cascade of strikes by public employes not seen elsewhere nor experienced before in the Keystone State.

Emotions run high when teacher strikes, and strikes by other school employes, affect the school attendance of children for any protracted period of time, especially at the elementary level and for high school seniors. Thus, Pennsylvania's Act 195 was intended so that public employes would have a limited right to strike, something that would be a reasonable balance between the raw power by public employe groups on the one hand to inflict grievous harm on the general public, and the authority by public officials on the other hand to represent the general public.

Writing in the February 2, 1973, issue of the *Information Legislative Service* under a "viewpoint" caption, the following commentary was noted.

"The sorry experience revealed in the earlier strike data clearly points up that the balance necessary to protect the general public interest just hasn't occurred to date under Pennsylvania's Act 195. **The problem isn't as much one of technical defect with the law as it is one of serious imbalance in how the law is being administered.** It is high time corrective action is taken.

"Collective bargaining is a proper device for public employes to determine the economic benefits that will accrue to them for the public services that they render, so long as such determination is subjected to the proper checks and balances of representative government.

"**Collective bargaining is not a device to determine the quality, quantity, or form of public services desired, or required, by the public.** If this is allowed to happen, representative government would be seriously impaired or virtually destroyed.

"In a study by Dr. Raymond D. Horton, assistant professor at the Columbia University Graduate School of Business, it has been noted "that the public has become losers to unionized city employes" in New York City. Citing "an increasing tendency in New York City for officials to see prohibitive **political** (emphasis ours) costs" in municipal strikes, Horton faults former New York mayors Lindsay and Wagner for allowing municipal unions "to seize the reins of power" to the degree that labor peace became a primary goal, with economic or managerial costs or concerns a secondary priority.

"The Commonwealth Court decision in the Armstrong School District case (see *School Law Information Exchange*, Vol. IX, No. 30) seriously weakened the proper balance of power between public employe groups and public employers when it placed severe limits on the effect of "Danger to the Health, Safety and Welfare." Until Centre County Judge R. Paul Campbell in the Bellefonte School District case (see *School Law Information Exchange*, Vol. IX, No. 68) recognized and articulated this imbalance of power, and restrained the threatened strike, school districts received little help from the courts in helping ensure that only a "limited right to strike" existed.

"Philadelphia Judge D. Donald Jamieson finally issued an injunction enjoining the Philadelphia teacher strike, the second such strike in the 1972-73 school year. Despite the court's order to return to work, the teachers' union flaunted the "limited right to strike" of Act 195, which impelled Judge Jamieson to proceed on criminal contempt charges against the union leadership. A jury found the union leaders guilty of such contempt charges."

This decision had somewhat limited effect, since it was later appealed to the State Supreme Court where it was overturned on technicalities of procedures (See *School Law Information Exchange*, Vol. XII, No. 17 [February 17, 1975]).

It took the 1975-76 school year Pittsburgh strike to bring about a court decision that gave some force and effort to the penalty provisions of Act 195 that prescribe penalties for illegal strikes (See *School Law Information Exchange*, Vol. XIII, No. 7 [March 10, 1976]). After refusal

by the union to obey court injunctions ordering strikers back to work, Judge Zeigler levied fines against the union and its individual striking members, and directed the school district to withhold payments of union dues up to an amount equal to the fines, such withholdings to be remitted by the school district to the court.

Strikes and subsidies

Some school districts that suffered strikes found themselves in a dilemma as to whether or not the school calendar should be extended, as requested by teachers' unions, so that the wages lost during the strike could be made up. This dilemma has been further compounded by court action and action of the Department of Education.

When one of the first struck school districts in Pennsylvania determined not to extend its school calendar because of community sentiment, the Department of Education issued a ruling stating that those school districts that did not complete 180 days of instruction would lose a proportionate sum of subsidy money. Although no specific language in the School Code precisely supports that interpretation, at least there was no objection to the rationale, since the withholding of teacher wages for the days on strike would offset the proportionate subsidy loss.

In 1970-71, with some 37 strikes throughout Pennsylvania, the Department of Education issued a second interpretation stating, in effect, that school districts that did not complete 180 days would suffer an additional loss in their second year of subsidy payments on the basis of a depressed aid ratio. Again, there was no specific reference that could be found in the School Code to document that particular interpretation. Nevertheless, the Department of Education maintained that position. As a result, legislation was introduced so that the aid ratio penalty to school districts would be removed.

In addition, in that same year those school districts that suffered strikes and were considering whether or not to extend the school calendar were confronted by teacher groups, who, by letter and personal contact with Department of Education officials, sought to secure statements that would have the effect of possibly subjecting the school district to the loss of their entire subsidy if such school district did not complete 180 days of instruction. Such advice was given to those individuals that requested it in the form of "To Whom It May Concern" letters. One such letter dated May 24, 1971, said in part "... *and could result not only in a proportionate loss of reimbursement but the withholding of the entire amount of the subsidy for the next school term.*" This particular statement was apparently presented without any Department of Justice advice. However, subsequent to the distribution of the May 24 letter, the Department of Justice issued advice that the Department of Education had no authority to withhold the entire subsidy payment for school districts that did not complete 180 days.

Apparently, as a result of this, another "To Whom It May Concern" letter was issued, dated May 28, 1971. This letter eliminated the

statement referring to the entire loss of subsidy payment, but continued on with other language which, to the casual observer, did not present a recognizable difference.

So, some persons, when requesting information from the Department on the basis of the very critical and emotional issue evolving around the strike, received conflicting letters. Subsequently, the Justice Department made the following statement regarding an inquiry by the Department of Education as to its authority to impose penalties beyond a change in reimbursement:

> It is our opinion, and you are so advised, that there is no provision of the School Code authorizing the Department of Education to impose penalties, other than the change in reimbursement, in such case.
>
> Possibly, resident taxpayers could bring an action under Section 318 of the School Code against the school directors for neglecting to perform their duty of providing 180 days of education; however, we pass no opinion on the propriety of such action at this time.
>
> The portion of Section 2552 of the School Code to which you refer is not applicable to this situtation since it is restricted to those cases in which the law violated is for the purpose of preserving 'the health or safety of pupils.' Being punitive in nature, this section must be strictly construed. The 180-day requirement would not appear to be related to health or safety.

In addition, the following quote is taken from a Department of Education memorandum dated April 8, 1971:

> The question has been raised as to the authority of the school district to promote and graduate students in the event that 180 days of school cannot be completed. Chapter 15 of the School Laws of Pennsylvania, in Sections 1531 and 1532, clearly assign responsibility to the local professional staff who certify satisfactory completion of work to the Board of Education. It is recommended, in cases where schools must extend beyond the original closing date, that graduation and promotion be postponed until the last possible day of the school year or until such other time as may be determined at a later date.
>
> In meeting graduation requirements attention is also invited to Sections 7-130 and 7-140 of Chapter 7, General Curriculum Regulations of the State Board of Education.

Pros and cons of makeup

In the school year 1974-75 the Department of Education sought to further force make up of days lost because of strike when it brought legal action against several school districts affected by strike, one of which — Leechburg School District — ended up before Commonwealth Court. In this case, the court followed the pattern of earlier court decisions and

refused to order the school district to make up the days lost because of strike (See *School Law Information Exchange*, Vol. XII, No. 60 [August 1, 1975]).

Rebuffed by the court, the Department of Education in August 1975 issued Basic Education Circular 86-75 that said:

> Judge Rogers therefore has ruled that the provision by school boards of 180 days of instruction for pupils is mandatory, even after a school strike. He further stated that: ". . . it seems to me now by hind-sight, my looking at it, that it was an abuse of the school boards discretion not to have amended the calendar and made up some of those days during the Christmas vacation and some of those days after, perhaps at the end of the year.

This memorandum had the effect of once again giving assurance to employe unions that local school districts would be under some compulsion to make up days lost because of a strike. It must be assumed that this reassurance was a significant factor in bringing about a record number of school strikes in the school year 1975-76.

Considerations regarding the extension of the school calendar to those districts that have been on strike could be:

- Whether or not striking employes lost salary, or do not have an opportunity to make up lost salary, should not be a consideration as to whether or not the school year should be extended. Act 195 is clear in its statement in Section 1006 — "No public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike." In the case of less than full-time employes, such as teachers, it seems pretty clear that the words "shall be entitled to" and "period engaged in any strike" means that loss in pay shall be incidental to such a strike.
- Consider the effect that such action would have on the local educational program. Will extending the school calendar prove worthy as instructional days for children?
- What is the community's sentiment regarding the extension of the school calendar by the school board?
- Consider the school solicitor's advice.
- Consider the Department of Justice's advice as noted previously.
- Consider what a proportionate loss in subsidy would mean to the school district as it relates to the withholding of employe pay for the days on strike.
- Consider the various court decisions that have dealt with this issue.

As the frequency of school strikes (by both professional and classified employe groups) has increased, local considerations have become increasingly important in helping determine the appropriate course of action regarding possible make-up of strike days.

Through the flexibility afforded by Act (80) of 1969 school districts have increasingly adopted school calendars that provide for fewer than 180 days, so long as a minimum program of 990 hours at the secondary level and 900 hours at the elementary level exist. In the school year 1975-76 more than 125 school districts had fewer than 180 days because of such an arrangement. Thus, strikes of short duration may well find that the minimum hours set forth in Act 80 are provided despite the strike.

Clarification of PIAA regulations

It became apparent that school district interscholastic activities governed by the Pennsylvania Interscholastic Athletic Association (PIAA) regulations would, and did, become a bargaining ploy by employe organizations as they sought ways to dramatize the effect of strikes. Thus, existing PIAA regulations came under scrutiny regarding what happened when schools were affected by strikes of employe organizations (this could be either teacher organizations or organizations representing classified personnel).

Article IX of the PIAA Constitution specified that the principal had the power "to have control over all interscholastic athletic relations in which his school participates. This applies to interscholastic athletics for both boys and girls." He also had the power "to authorize a full-time teacher of his school district to be the faculty manager of the teams representing his school, unless he himself acts as the faculty manager."

PIAA Bylaws, Article XIII, required that: "Only full-time, professional employes certified by the Pennsylvania Department of Education, who are employed in a full-time professional capacity by the school district in which they are employed shall coach, direct, or assist in coaching athletic teams in the school district where employed."

Article XI of PIAA Bylaws governs athletic relations and Section 6 of this article reads, "In case the failure to play a game as scheduled should be due to the disbandment of either team by the principal, the penalty may or may not be imposed, provided that the principal immediately notifies the district committee, the Board of Control and the faculty managers of such teams as his team is scheduled to play, stating the reason for disbandment."

In May 1970, the PIAA Board of Control adopted the following interpretation to apply to Section 6: "Schools which are closed due to school board action, teacher strikes, racial strife, or for any reason other than an Act of God, and the student body is unable to attend and follow their regular academic program, these schools shall not participate in athletic practice sessions or regularly scheduled athletic contents during the period the school is closed. Contests scheduled during the period of closing shall be forfeited and not rescheduled."

In December 1972, the PIAA Board of Control, by virtue of an approval by its membership of a proposed bylaw change, officially adopted changed language in Article XI, Section 6 which now provides:

Article XI, Section 6

Schools which are closed by school board action because of teacher strikes, racial strife, or for any reason other than an act of God, shall not participate in athletic contests during the period school is closed.

Normal practice sessions are permitted if the local school board directors permit such action. Normal practice sessions may not exceed that which would be normal if the school was in sessions.

Contests scheduled during the period of closing may be rescheduled by mutual agreement of the affected schools. In such cases, the rescheduled contest must be in conformity with PIAA and district regulations.

Inability to reschedule the contest shall result in a forfeiture by the closed school.

If an individual, or a team, qualifies and is eligible at the beginning of a state tournament, they shall remain eligible throughout.

However in May 1975, in an effort to allow school districts to continue district programs wherever possible, the PIAA Board of Control, by virtue of the approval of its membership adopted language changing the first paragraph of Article XI, Section 6 to provide: **Schools which are closed because of teachers' strikes, racial strife, or for any other reason including an act of God, may participate during the period the school is closed, at the discretion and mutual consent of the boards of education involved.**

Summary

The following summary of strike circumstances may serve as a helpful reminder when confronted with the possibilities of a strike.

- When an impasse develops, **both** parties must still ultimately bargain to reach a mutually acceptable agreement. (See *School Law Information Exchange*, Volume VII, No. 29 [May 13, 1971].)
- The filing of unfair labor practice charges is available to both parties. (See *Negotiation Guidelines* 3-30-71-11.)
- Employe organizations cannot force bargaining on issues which are not issues on which bargaining is mandated. (See *School Law Information Exchange*, Volume IX, No. 38 [July 11, 1972] and Volume XII, No. 42 [April 23, 1975]).
- Fringe benefits and other **contract** items die with the agreement. (See *Negotiation Guidelines*, Volume II, No. 40 [August 1, 1972]).
- Courts cannot impose settlements. (See *Negotiation Guidelines* Volume II, No. 30 [May 31, 1972].).

- Subsidies affected by strikes are a consideration that cannot be overlooked. (See *Negotiation Guidelines*, 6-8-71-20 and *School Law Information Exchange*, Vol. XII, No. 71 [September 5, 1975]).
- A series of suggestions has been set forth for consideration when confronted by a strike (See *Negotiation Guidelines*, Volume II, No. 21 [April 5, 1972] and Volume II, No. 24 [April 26, 1972.]).
- **Basic Education Circular No. 129 [August 29, 1974] discussed team visitations. Wherever possible, a PSBA staff representative will also visit the local school district in conjunction with such a team visit. Department of Education officials have concurred in this arrangement.**

Grievance and arbitration

The heart of a collective bargaining agreement is its grievance procedure. It is here that the agreement is given life and substance — here it is determined how broad a sweep the bargaining agreement will have.

Section 903 of Act 195 says:

> Section 903. Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decisions of the arbitrator or arbitrators requiring legislation will only be effective if such legislation is enacted:
>
> (1) If the parties cannot voluntarily agree upon the selection of an arbitrator, the parties shall notify the Bureau of Mediation of their inability to do so. The Bureau of Mediation shall then submit to the parties the names of seven arbitrators. Each party shall alternately strike a name until one name remains. The public employer shall strike the first name. The person remaining shall be the arbitrator.
>
> (2) The costs of arbitration shall be shared equally by the parties. Fees paid to arbitrators shall be based on a schedule established by the Bureau of Mediation.

The two parties to the agreement are required by law to utilize a third party to determine what the two parties meant by the language that they chose to place in the bargaining agreement. Where the language is not clear and precise, this third party — the arbitrator — will determine what the parties intended by the language they explicitly set forth (or the language that they failed to set forth). Generally, the decision of such an

arbitrator is final and the courts will not upset such a decision unless it can be shown that the arbitrator exceeded his authority.

By referring to the suggested grievance procedure shown on pages 35-37 one may review how a grievance moves to arbitration.

Almost irrespective of the language that exists in a collective bargaining agreement, the action that is taken at the first level of the grievance procedure gives substance and meaning to the contract language. Thus, the key in the collective bargaining processes is the action of the first level supervisor as he or she disposes of, or resolves, grievances at the first level. This is where the importance of several factors comes into play.

- Is the grievance definition precisely worded so that it limits a grievance to a claimed violation of the agreement?
- Is the bargaining agreement properly structured so that matters of public policy are not included, thus avoiding the possible unfortunate consequences of grievances and arbitration about such matters? (It does little good to have a proper or excellent grievance definition if the agreement itself includes policy items, thus subjecting them to grievance action.)
- Is the first level supervisor sufficiently familiar with the bargaining agreement and the background of the language found in the agreement so that he or she can appropriately administer the contract and properly act upon grievances?
- Finally, is the first level supervisor (first level in the grievance procedure) sufficiently imbued with management responsibilities in this area of collective bargaining to act properly in accordance with the contract language yet act consistently in comportment with his or her management responsibilities? A first level supervisor can, through grievance action, literally remake the meaning of a collective bargaining agreement if he or she consistently establishes precedents by grievance decisions that run contrary to the intent of the agreement. (Because grievances acted favorably upon at the lower levels of the procedure are not necessarily subjected to review at a higher level, it is critically important that such a review take place so that unfortunate and contrary grievance action at the first level is not permitted to stand unchallenged as a precedent for future action.)

It was because of the recognition of the significance of this first level grievance action that an attorney general advisory said:

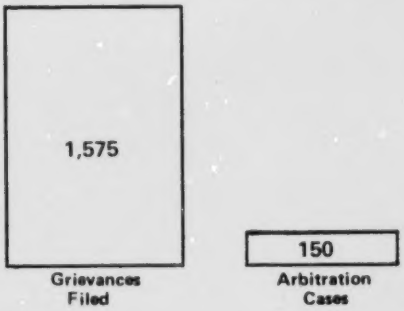
> Your question whether a union member may participate in behalf of the school board against another union member or a union in regards to a grievance, has been answered correctly many times to the effect that Section 1801 precludes this because the handling of grievances is part of the collective bargaining process.

A survey of statewide grievance arbitration action by PSBA in the spring of 1973 revealed the following data:

From July 1, 1971 to March 10, 1973, there were 1,575 grievances initiated at the first level of the grievance procedure. During the same period, 150 grievances were taken to arbitration (the final step in the grievance procedure to resolve the issue in dispute).

PROFESSIONAL AND CLASSIFIED CONTRACTS*
Total Number Of Grievances/Arbitration Cases

EXHIBIT A-1



*All data reported in the following Exhibits are projected to reflect statewide significance.

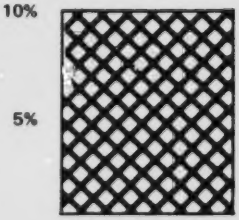
PROFESSIONAL AND CLASSIFIED CONTRACTS
Ratio Relationship Of Grievances Filed To Arbitration Cases

EXHIBIT A-2

10.5 to 1

PROFESSIONAL AND CLASSIFIED CONTRACTS
Percentage Relationship Of Arbitration Cases To Grievances Filed

EXHIBIT A-3

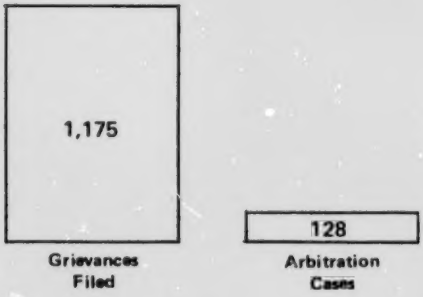


9.5% of all professional and classified unit contract grievances are processed through arbitration.

A separate breakdown of grievances and arbitration cases for professional and classified contracts indicates the following:

PROFESSIONAL EMPLOYE CONTRACTS
Total Number Grievances/Arbitration
July 1, 1971 – March 10, 1973

EXHIBIT B-1



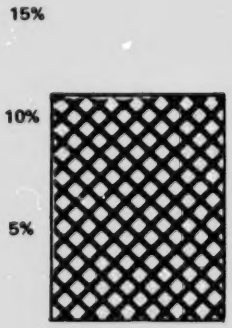
PROFESSIONAL EMPLOYE CONTRACTS
Ratio Relationship Of Grievances Filed
To Arbitration Cases

EXHIBIT B-2

9.1 to 1

PROFESSIONAL EMPLOYE CONTRACTS
Percentage Relationship Of Arbitration Cases
To Grievances Filed

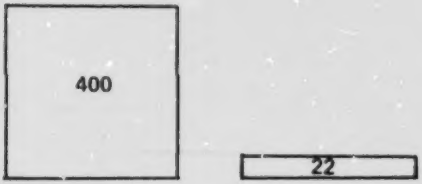
EXHIBIT B-3



10.8% of all professional unit contract grievances are processed through arbitration.

CLASSIFIED EMPLOYE CONTRACTS
Total Number Grievances/Arbitration Cases
July 1, 1971 – March 10, 1973

EXHIBIT C-1



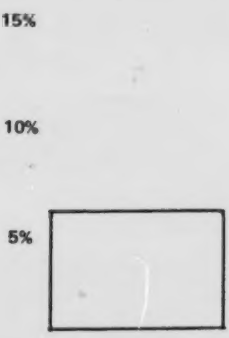
CLASSIFIED EMPLOYE CONTRACTS
Ratio Relationship of Grievances Filed To Arbitration Cases

EXHIBIT C-2

18.2 to 1

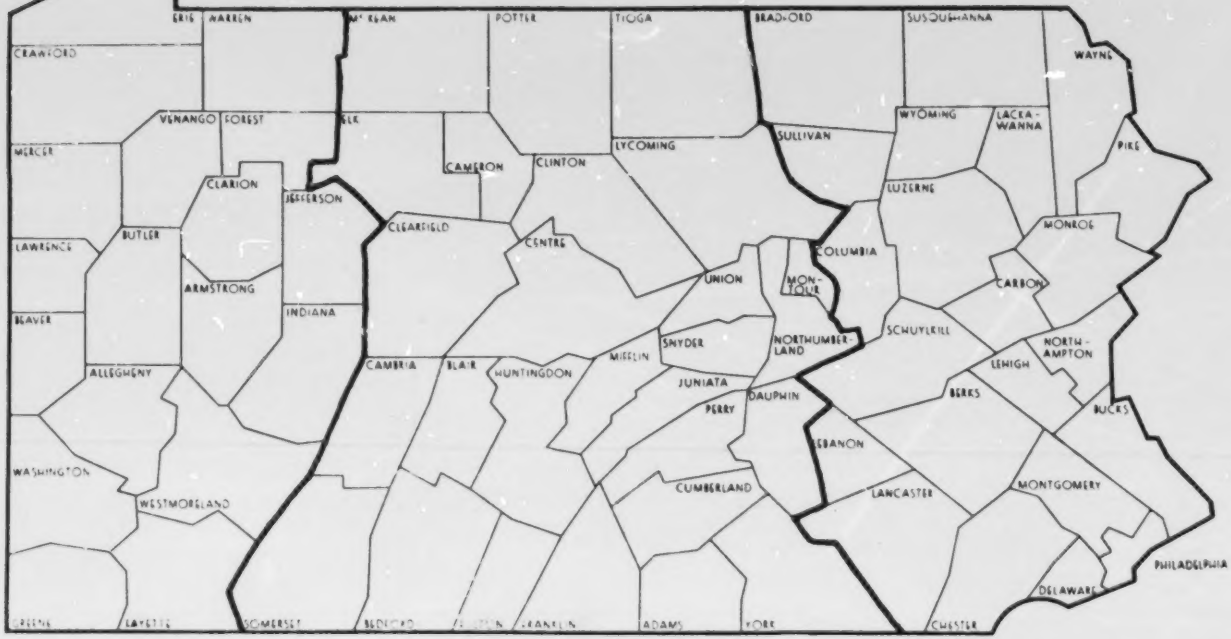
CLASSIFIED EMPLOYE CONTRACTS
Percentage Relationship Of Arbitration Cases To Grievances Filed

EXHIBIT C-3



5.5% of all classified unit contract grievances are processed through arbitration.

A look at statewide influences (total professional and classified contracts) broken down into three main divisions of the state indicates:



WESTERN AREA

643 Grievances Filed
63 Arbitration Cases
Ratio Relationship 10.2:1
Percentage Relationship 9.7%

CENTRAL AREA

148 Grievances Filed
17 Arbitration Cases
Ratio Relationship 8.7:1
Percentage Relationship 11.4%

100

EASTERN AREA

784 Grievances Filed
70 Arbitration Cases
Ratio Relationship 11.2:1
Percentage Relationship 8.9%

Summary reflections

- On the average, 10 grievances filed will result in one (1) going to arbitration.
- The greatest percentage of grievances filed (50%) occurred in the eastern section of the state.
- The smallest percentage of grievances (9%) filed occurred in the central section of the state.
- The greatest percentage of arbitration awards (47%) occurred in the eastern section of the state.
- More grievances have been filed in professional unit contracts than classified unit contracts.
- More professional contract grievances have gone to arbitration than classified contract grievances.
- An estimated average of $1,300 total cost (arbitrator, attorney fees, and records, plus other miscellaneous expenses) per arbitrator hearing, is incidental to a grievance arbitration. (half of this cost is borne by the local school districts; the other half, by the employe union).
- The Bureau of Mediation has furnished lists of arbitrators to local districts for almost 75% of the grievances going to arbitration as provided in Section 903 (1) of Act 195.

A review of arbitration decisions rendered thus far clearly points up again the significance of good contract language. Invariably, poor contract language leads to improper grievances and subsequently poor arbitration decisions. (Note: *Public Sector Arbitration*, a PSBA Labor Relations Service, reviews arbitration decisions.)

Don't pass along grievances that should be rejected at the first level

If a grievance is improper under the language of a given contract, **it should be denied at the first level of the grievance procedure.** Unless the grievance can be tied directly to a specific section and phrase of the contract, **it is not a proper grievance** (if the contract language has been properly structured): in such an event, a mere statement that the grievance is not a proper grievance under the contract and is denied is all that is necessary.

Don't allow questionable or unclear grievances to go to a second or higher level. When this happens, it is very difficult to contend that a grievance is improper and therefore should not go to binding arbitration. In order to keep **improper** subjects out of arbitration and beyond the reach of arbitrators, ensure that first level grievance action rejects those claims which are not appropriate and not consistent with the contract language. **Be precise** — this is no place for guessing.

If there is then a genuine disagreement, based upon contract language, as to whether or not a grievance is in truth a grievance under

the contract, the grievant has other recourse available. **Alleged grievances which are not grievances under the contract should not be processed through the grievance mechanism of the contract.**

Collective bargaining agreements are not instruments for the administration of schools. Rather, they are devices to regulate the labor relations aspect of school operations. Similarly, grievances are not vehicles for the control of school programs or activities but are, instead, the means by which claims may be made that a collective bargaining agreement has been violated by the employer.

There is a fundamental principle of this process that needs to be remembered. There is a commonly used adage in collective bargaining, "act now, grieve later." **An imagined grievance is not a cause for an employe to fail to follow directions.** Failure to follow directions should be a cause for disciplinary action. If the action required of the employe by the employer is subsequently determined to be a violation of the contract, then the aggrieved employe has a justifiable basis for the filing of a grievance. However, the possibility that a grievance may be filed is not a justifiable basis for failure to follow direction. Neither should such a possibility deter appropriate administrative action.

School board responsibilities

A school board generally will have little involvement in the day-to-day administration of the collective bargaining agreement and the grievances that arise under it. Usually the board's role will be limited to the role depicted in step IV of the grievance procedure as shown on page 35. However, the board and superintendent have a primary responsibility to see that the various levels of supervision responsible for administering the collective bargaining agreement, and responsible for grievance action, are fully informed and properly trained as to the roles that they must play. **Unless this kind of preparation and guidance is given to the administrative staff, the grievance procedure and how it is handled may become the Achilles heel of the best of bargaining agreements.**

Require the arbitrator to first rule on arbitrability

In the event that a grievance remains unresolved after having been processed through the grievance procedure, and there remains doubt as to whether or not the issue is one appropriate for arbitration, make certain that the arbitrator is first required to rule on the arbitrability of the issue.

Arbitrators are generally not required to look beyond the contract language of the governing contract in order to make their decision. They are not required to judge as to whether the issue raised is an appropriate one for arbitration under the contract unless one of the parties at interest raises such a question. Thus, it is considered good practice in many quarters to require the arbitrator to first rule on whether or not the issue

in question is appropriate for aribtration before ruling on the merits of the issue to be decided. Because the arbitrator is not obligated to look at the provisions of the School Code or other statute, it is also wise to call to the attention of the arbitrator pertinent sections of school law or of other statute which bear upon, or control, the subject at issue.

Don't accept arbitration lightly

Arbitration is not to be lightly regarded. Generally, the courts will not upset an arbitration award that results from the proper exercise of the arbitrator's power in deciding appropriate issues that have arisen under the grievance procedure of a bargaining agreement.

Arbitrators should not be permitted to become the persons responsible for establishing public policy in education or any other field of public service. This can't happen if proper contract language has been used and the issue referred to arbitration is one that appropriately arises under a properly constructed grievance procedure.

In order to clarify the manner in which arbitrators may be chosen, and arbitration should proceed under Section 903 of the act, the Deputy Attorney General issued the following advisory in April 1972:

TO: Charles S. Solit
General Counsel
Department of Labor and Industry

FROM: Mark P. Widoff
Deputy Attorney General
Department of Justice

I. You have requested our opinion as to whether the Bureau of Mediation of the Department of Labor and Industry must submit a list of arbitrators under Section 903 of the Public Employe Relations act, Act of July 3, 1970, P.L. ____, No. 195, Art. IX, Sec. 903 (43 P.S. Sec. 1101.903), when a dispute has arisen out of "the interpretation of the provisions of a collective bargaining agreement," and where **one party** to the agreement notifies the Bureau that the parties cannot voluntarily agree upon the selection of an arbitrator and requests that a list of arbitrators be sent. You are advised that the Bureau is obliged to send a list of arbitrators under those circumstances.

Section 903 of the Act provides:

Section 1101.903, Disputes under collective bargaining agreement; mandatory arbitration

> Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement **is mandatory. The procedure to be adopted is a proper subject of bargaining** with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decisions of the arbitrator or arbitrators requiring legislation will only be effective is such legislation is enacted:

(1) If the parties cannot voluntarily agree upon the selection of an arbitrator, **the parties** shall notify the Bureau of Mediation of their inability to do so. The Bureau of Mediation shall then submit to the parties the names of seven arbitrators. Each party shall alternately strike a name until one name remains. The public employer shall strike the first name. The person remaining shall be the arbitrator.

(2) The costs of arbitration shall be shared equally by the parties. Fees paid to arbitrators shall be based on a schedule established by the Bureau of Mediation. (emphasis added)

The Bureau has apparently taken the position that since the legislature used the plural in Sec. 903 (1) — "the **parties** shall notify the Bureau of Mediation. . . ." — therefore, **both** parties must send such a notification and **both** thereby agree to submit to arbitration. Unless both so agree, the Bureau may not submit the names of the arbitrators. Such a construction would do such violence to the meaning and purpose of Sec. 903 as to render the entire section a nullity — a result that, under the Statutory Construction Act, is never to be assumed to be the intent of the Legislature. See Act of May 28, 1937, P.L. 1019, Art. IV, Secs. 51, 52 (46 P.S. Secs. 551, 552). Since the Legislature provided in the first sentence of Sec. 903 of the Act that "[a]rbitration. . .is **mandatory**" we must conclude that the use of the plural in Sec. 903 (1) was simply to indicate that when the parties to a collective bargaining agreement cannot agree on an arbitrator, they **both** have the duty to report this state of affairs to the Bureau of Mediation. This construction is in conformity with the meaning of the phrase as a whole since the Legislature provided that "the parties **shall** notify the Bureau of Mediation. . ." — not **may** notify.

When one of the parties ignores the statutory mandate to report the inability to agree on an arbitrator to the Bureau, this failure should not paralyze the Bureau from completing its own statutory duty. It is not necessary at this time to indicate what remedies might be available to the other party, to the Bureau, or to the Pennsylvania Labor Relations Board in the case of failure by one or both of the parties to follow the legislative mandate. Suffice it to say that the failure of one party to report certainly ought not to be rewarded in any way. The Bureau should and must follow through the statutory scheme and submit the names of the arbitrators to the parties.

II. You have also asked if the procedure provided for in Sec. 903 (1) of the Act may be modified in any way by the collective bargaining agreement.

You are advised that such modification is permissible under the Act and, where such a modification is made, that its provisions control.

The relevant language of Sec. 903 provides:

"The procedure [for compulsory arbitration] to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as

the parties may agree." This language being quite clear, the parties may make modifications in the procedure described in Sec. 903 (1) as, for example, in changing the number of names to be submitted and in providing for a single arbitrator.

MPW:brs

Arbitrator's authority

The matter of how much control an arbitrator will have over policy decisions of public officials has become a troubling problem under many contracts.

The public employer has two primary avenues of approach to take when it is believed that an arbitrator has rendered an improper award.

The first route to take is to file an appeal for review with the Commonwealth Court pursuant to Pennsylvania Rules of Judicial Administration No. 2101. This method of appeal has been established in the case of *Community College of Beaver County vs. Community College Faculty*, 17 Pa. Cmwlth. 231, 331 A 2d, 921 (1975).

> It is clear that Pa. R.J.A. No. 2101 provides this Court with subject matter jurisdiction over an appeal from an arbitrator's award made pursuant to a collective bargaining agreement.
>
> It is especially clear that the standard of review here is the so-called "essence test", which provides that the award of an arbitrator, commissioned pursuant to a collective bargaining agreement, must draw its "essence" from that agreement. The arbitrator is restricted to an interpretation and application of the agreement, and the award draws its "essence" from the basic agreement if it is in any way rationally derived therefrom. Only when there is a manifest disregard of the agreement may the reviewing court disturb the award.

The second route to take would be to fail to implement an award issued by an arbitrator thus compelling the union to file unfair labor practice charges against the employer for refusing to implement an arbitrator's award pursuant to Section 1201 (a) (8) of Act 195 which states that it is an unfair labor practice for a public employer to refuse to comply with the provisions of an arbitration award deemed binding under Section 903 of Act 195.

In a decision issued by the Commonwealth Court in a case known as *Pennsylvania Labor Relations Board vs. Commonwealth of Pennsylvania*, Pa. Cmwlth. 350 A.2d 199, (1976), the Pennsylvania Social Services Union (PSSU) filed a grievance demanding that a particular employe of the Department of Pubic Welfare be restored to her position in a dispute concerning the commonwealth and the PSSU. The matter ultimately went to arbitration whereupon the arbitrator ordered the commonwealth to reassign this person to her former position. The commonwealth contended in this case that the arbitrator exceeded his authority, thus violating Section 702 of Act 195 and in so complying with the arbitrator's award the commonwealth stated that it would be in violation of Section

703 of Act 195 which provides that the parties to a collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the commonwealth. . . . Upon its failure to implement the award the PSSU filed an unfair labor practice charge pursuant to Section 1201 (a) (8) of Act 195 to enforce the award. The PLRB issued a complaint and after a hearing a nisi decision and order was entered which concluded that the commonwealth did in fact fail to comply with the arbitration award. The commonwealth filed exceptions to the nisi decision challenging the validity of the award. These exceptions were dismissed by the PLRB in making its final order directing compliance with the arbitrator's decision.

The Commonwealth Court noted in its opinion on this case that for PSSU to have the award enforced it must show not only that the commonwealth refused to comply with the award, but also that the award is binding under Section 903.

The issue of an arbitrator's authority as it relates to impact on existing statute is not limited to Pennsylvania. Most other states in which arbitration is available as a method of dealing with grievances have experienced problems similar to those that confront Pennsylvania school officials. Two notable such cases occurred in Massachusetts (See *School Law Information Exchange*, Vol. XIII, No. 70, School Committee of Hanover) where the issues had to do with the arbitrator's authority to order a school committee (school board) to rehire employes discharged because of abolition of the positions affected. In both cases the Massachusetts Supreme Court upset the awards of the arbitrator on the grounds that he exceeded his authority.

Occasionally the question will arise as to whether or not an individual employe may pursue arbitration on his own irrespective of whether or not the employe organization chooses to go to arbitration over a grievance. **It must be remembered that the collective bargaining agreement is a contract between the employer and the employes bargaining agent.** The bargaining agent has the right, and responsibility, to make such a decision: the employe is bound by that decision unless the employe can show discriminatory, or illegal, treatment by the bargaining agent with respect to the affected employe. In any event, the employe's redress is with the bargaining agent, not with the employer. In discussing this in a legal memorandum, the general counsel of the Department of Labor and Industry said:

> Section 606 of the Public Employe Relations Act does not confer on the employe the right to have his individual grievance processed through arbitration. To interpret the language of Section 606 to confer an absolute right on a public employe to individually process his grievance and compel the public employer to go to arbitration would contravene the fundamental purpose of the Public Employe Relations Act.

Grievance arbitration — not for amateurs

No matter how adroitly phrased, few collective bargaining agreements are free from possible misinterpretation or misapplication. Negotiators cannot be expected to dot every i, nor cross every t, after reaching accord on substantive terms. Nor can they anticipate every contingency that might arise so as to cover it by explicit contract language. Hence the use of arbitration is to provide a terminal point for grievances arising during the life of an agreement.

Framing the questions to be arbitrated

Many arbitration cases are won or lost even before an arbitrator is selected. This may happen even before the parties reach a position on an unresolved grievance that may necessitate going to arbitration.

Should a school board contend that the matter the employes wish to have decided upon by an arbitrator is merely a "gripe" rather than a grievance as defined in its agreement, or a matter expressly excluded from adjudication under the grievance procedure, it is essential that the board clearly state its position in writing before the services of an arbitrator are sought. This may be accomplished in the board's answer at the last pre-arbitration step in the grievance procedure. If such answer is cogently and convincingly expressed the employe representatives may be inclined not to insist on proceeding further.

On the other hand, the board or the superintendent may find it desirable in denying a grievance to spell out the reasons in sufficient detail to enable that written statement to be used in effect, as the formulation of the question or questions to be considered by the arbitrator.

The board and the employe group should try to agree in advance on a so-called submission statement defining and delineating the issue or issues to be presented for the arbitrator's decision. Never should such a submission statement authorize the arbitrator to exercise unlimited discretion as to his award, nor should it allow the arbitrator to alter the contract.

Role of the superintendent

The superintendent should almost never be the board representative to present the board's case in a grievance arbitration proceeding. The superintendent generally should be the chief witness for the board. Hence the imperative need that the board be represented in arbitration proceedings by a specialist — lawyer or layman — who has expertise in the presentation of arbitration cases arising in the public sector.

Presentation of cases

Rarely do arbitrators insist on the presentation of cases in the formal legalistic way that prevails in court proceedings. Strict rules of admissibility of evidence are almost never enforced. Good arbitrators want to get to the root of the issue before them and don't want to be bogged down with legal technicalities. The following tips may be helpful:

1. If an opening statement explaining the rationale of the case is to be presented, "it should be clear, concise and well organized."

2. Exhibits showing the factual basis for points in contention should be presented in the course of the hearing.

3. Direct examination of witnesses should be to the point, "complete but not repetitive."

4. "Cross-examination should be used carefully and only in situations where the advocate is almost certain that the testimony obtained will weaken the case of the opposing party."

Important factors

There are two important contract elements that are related to grievances and strikes that should be a part of every collective bargaining agreement.

Waiver Clause — The waiver clause shown on page 30 under Section IX of the suggested contract guidelines is a highly necessary part of every bargaining agreement. Such a clause recognizes that the two parties have intended that all matters to be negotiated for the contract period have been considered. The agreement should represent the final understanding of the two parties and should not be subject to reopeners or claims regarding other issues during the term of the contract.

The inclusion of such a clause prevents other subjects from being introduced into the grievance procedure as well, thus ensuring that only issues dealt with in the contract will become grievable subjects. More than 67 percent of all collective bargaining agreements presently in force contain an appropriate waiver, or zipper clause.

No-Strike Clause — The suggested no-strike clause shown on page 28 under Section III of the recommended contract guidelines is also a necessary contract element. This ensures that a legal strike cannot take place during the term of an existing contract. More than 83 percent of all collective bargaining agreements presently in force contain a no-strike clause.

Conflict of interest considerations

Conflict under the law

Article 18, Section 1801, defines conflicts of interests and identifies the responsibilities of public employers if a conflict of interest exists as follows: "(a) NO person who is a member of the same local, state, national OR INTERNATIONAL organization as the employe organization with which the public employer is bargaining or who has an interest in the outcome of such bargaining which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in

the collective bargaining processes WITH THE PROVISO THAT SUCH PERSON MAY, WHERE ENTITLED, VOTE ON THE RATIFICATION OF AN AGREEMENT."

(b) "Any PERSON who violates subsection (a) of this section shall be immediately removed by the public employer from his role, if any, in the collective bargaining negotiations or in any matter in connection with such negotiations."

Paragraph (b) of Section 1801 clearly places the responsibility of removing conflict of interest violations on the school district. PSBA has always recognized the right of every individual to join any organization whatsoever, but if the individual who makes such a decision on his own behalf creates a conflict of interest thereby with regard to Act 195 and his or her responsibilities in representing the employer, the public employer **must** remove this employer representative **"from his role if any in the collective bargaining negotiations or in any matter in connection with such negotiations."**

Considerations

Several considerations related to the conflict of interest section of Act 195, Section 1801, need to be kept in mind when applying this section of the law.

The handling of grievances under a collective bargaining agreement is probably the single most significant happening that occurs under such an agreement. Indeed, the actions taken by supervisors at the first level of the grievance procedure are the essence of the intent of the bargaining agreement, for what happens here gives meaning to the language that the negotiators have agreed upon. Precedents established in the grievance procedure under a given contract are the benchmarks for that contract — the criteria by which future grievance actions are usually measured. Thus, grievance action is properly an integral part of the collective bargaining processes.

This position is consistent with the language of Section 701 of the act which says, in part, "Collective bargaining is the performance of — employers and the representatives of the public employes to meet — and confer in good faith — or the negotiation of an agreement **or any question arising thereunder and the execution of a written contract** —" (emphasis added). Certainly, grievance resolution deals with questions arising under an agreement negotiated.

Section 702 of the act says in part that "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include — the **organizational structure and selection and direction of personnel**" (emphasis added). Thus, it seems clear that public employers are indeed free to choose the manner in which they will select, arrange, and deploy personnel, especially supervisory personnel, in order to carry out the mission of the employer. They are not required to bargain about such arrangements, nor does the act impose limitations upon how such persons will be chosen.

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Section 604 of the act says, in part, "The board shall — (5) Not permit employes at the first level of supervision to be included **with any other units** of public employes but shall permit them to form their own separate homogenous units" (emphasis added). This appears to be a clear provision of the act designed to protect public employers from the conflict of interest that arises when supervisors are permitted to belong to the same organization which represents employes whom they must supervise and where they must act upon grievances submitted by the employes' organization. In other words, this provision of the act is designed to prevent self-dealing by supervisors who, if permitted to belong to the same organization representing employes, could make decisions contrary to the best interest of the employer. Certainly, grievance action falls in this category. What happens in the grievance procedure, especially at the first level, offers the greatest danger and opportunity for such a conflict of interest to exist, and various sections of Act 195 are designed to ensure that this will not come about.

Section 301 (6) of the act says, in part, "'Supervisor' means any individual having authority in the interests of the employer to — direct them or adjust their grievances; or **to a substantial degree effectively recommend such action** —" (emphasis added).

Section 301 (19) says "'First level of supervision' and 'first level supervisor' means the lowest level at which an employe functions as a supervisor." Thus, there is no restriction placed by the act upon the assigned tasks or responsibilities which may be given to a supervisor by an employer, which is consistent with what may be properly expected from supervisors. This is further underlined by the language of Section 706 of the act which says: "Nothing contained in this act shall impair the employer's right to hire employes or to discharge employes for just cause consistent with existing legislation."

One further provision of the act bears upon this situation before considering the effect of Section 1801. Section 1201 (b) (2) of the act says: "Restraining or coercing a public employer in the selection of his representative for the purposes of collective bargaining **or the adjustment of grievances**" (emphasis added) is an unfair practice.

Couple the foregoing considerations with the language of Section 1801 of the act. Grievance action certainly comes under the description "any matter in connection with such negotiations." Note that the word in section (a) is "processes," not process, and it seems implicit that grievance procedures are a part of the collective bargaining processes.

The matter of whether or not grievance action is an integral part of the collective bargaining processes under Act 195 was resolved when the PLRB ultimately agreed that this was true, and in an opinion dealing with the Community College of Beaver County, PLRB said that this was true. (See *School Law Information Exchange*, Vol. XII, No. 69 and Vol. XIII, No. 2).

Local school districts must also comport with the tenure provisions of the School Code in addition to the provisions of Act 195. Under the tenure

provisions of the School Code, principals and other professional persons functioning as supervisors — except for commissioned personnel — have the protection of tenure law in that they cannot be discharged, or have their salary reduced, except as outlined in the code. Note, however, that this does not convey tenure for a given supervisory position; it does, instead, ensure that the tenured person will retain his salary entitlement and seniority for a professional position for which he is qualified. Nothing prohibits a district from replacing a principal or other supervisory person with another qualified supervisory person, but no reduction in the displaced person's salary may be instituted without the agreement of the person thus displaced.

It is fundamental that permitting supervisory or management personnel to belong to the same organization that represents bargaining unit employes tends to require such supervisors to conform to the discipline and group behavior devised by the bargaining agents which is often at cross purposes with the best interests of management and, in this case, the general public interest.

Given all of the above considerations, it would seem that the following pertains:

(1) Public employers are free to choose their supervisors without restraint by the employe organization or the act.

(2) School employers have certain limitations placed upon them, with respect to the selection of principals and other professional supervisors, which are not regulated or controlled by the act.

(3) Within the restraints of (2) above, school employers have every right to expect that supervisors thus selected by the employer shall be eligible to, or will make themselves eligible to, fully function as a supervisor on behalf of the employer.

(4) A given supervisory position may require the functioning of that supervisor in the grievance procedure.

(5) The employer is required to ensure that a conflict of interest does not exist regarding his management level and supervisory employes in their relationship with organizations representing bargaining unit employes.

(6) In the event that supervisors or other management persons refuse to make themselves eligible to function as supervisors as defined in the act, the employer is free, if indeed not obligated, to remove that person from his supervisory position and to replace that person with another person who can fully perform as a supervisor without a conflict of interest.

The Supreme Court of the United States, in a case involving the application of the National Labor Relations Act (See *School Law Information Exchange*, Vol. XI, No. 45), recognized the kind of conflict of interest that arises when supervisors are permitted to be a part of the bargaining processes in their own interest. Said the court:

> Supervisors are management people. They have distinguished themselves in their work. They have demonstrated their ability to take care of themselves without depending upon the pressure of collective action. No one forced them to become supervisors. They abandoned the 'collective security' of the rank and file voluntarily, because they believed the opportunities thus opened to them to be more valuable to them than such 'security.' It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead, to the leveling processes of seniority, uniformity and standardization that the Supreme Court recognizes as being fundamental principles of unionism. (*J.I. Case Co. vs. National Labor Relations Board*, 321 U.S. 322 (1944)). It is wrong for the foremen, for it discourages the things in them that made them foremen in the first place. For the same reason, that it discourages those best qualified to get ahead, it is wrong for industry, and particularly for the future strength and productivity of our country.

In another case under Act 195, the Pennsylvania Labor Relations Board decided the case involving a question of a person on the school board's negotiating team who was a member of the same state organization with which the district was bargaining. The case is entitled *PLRB vs. South Allegheny School District*, Case No. PERA-C-6817-W. In this case the school district had its superintendent on its negotiating team and the superintendent in question was a life member of PSEA and NEA. Upon challenge by PSEA to remove him from the negotiating committee the school board refused, whereupon the PSEA filed an unfair labor practice charge which was decided in their favor by the PLRB. In summary the PLRB held as follows:

> The language of the legislature is explicit, i.e., no member of an employe organization can participate in the process of collective bargaining on behalf of the public employer when the other party to the negotiations is an employe organization affiliated with the organization of which he is a member. Any person in violation of this mandate **shall** immediately be removed by the public employer from his role in the collective bargaining negotiations.

The problem that such a conflict of interest through membership by an employer's representative in an employe organization with which the employer must bargain is twofold: the union can properly raise the charge of possible undue interference and influence in the union's affairs by a management representative; and the employer should properly object to its representative possibly being subjected to constraint or undue influence because of membership in the union. Neither should be allowed.

The Elizabethtown School District (See *School Law Information Exchange*, Vol. XI, No. 60) found a solution to this problem through the simple requirement that before any employe would be considered for a supervisory or management level position such employe had to

demonstrate that he or she did not have such a conflict of interest by virtue of membership in an employe organization that represents bargaining unit personnel.

Position descriptions and appropriate bargaining unit makeup

How to determine exclusion

Several PLRB decisions have dealt with the issue of what activities may be properly excluded from a given bargaining unit. Especially of interest are decisions in: The *Moniteau School District* case (See *School Law Information Exchange*, Vol. X, No. 19) which had to do with custodial supervisors, cafeteria managers, and the superintendent's secretary; the *Shaler Area School District* case (PERA-U-2092-W) which involved positions of office manager and kitchen managers; and the *West Shore School District* (See *School Law Information Exchange*, Vol. X, No. 20) which involved various determinations regarding custodians and secretaries.

These earlier decisions have been supplemented by later decisions that help clarify the application of Act 195 so that its effect seems to be more consistent with the Supreme Court of the United States ruling referenced above regarding the National Labor Relations Act. Two court cases are especially helpful in clarifying this area of the application of the act.

In an Altoona Area School District case (See *School Law Information Exchange*, Vol. XIII, No. 18) the Blair County Court and the Commonwealth Court overruled the PLRB and established that payroll clerks and secretaries to building principals were "confidential employes" under the act and, thus, excluded from the provisions of the act. With respect to the Commonwealth Court opinion, the court said:

> We are not unmindful of the concerns expressed by the PLRB and the Association that the definition of 'confidential employe' under Act 195 might lend itself to an interpretation so inclusive as to cover a far larger number of employes than is necessary to protect the bargaining position of an employer which is the obvious purpose of the exclusion. If a better definition is required, however, the legislature can provide it. In any case, we do not believe that there is any problem involved with this definition here. On the contrary, **it appears that the employes here concerned are potentially in a position to gain access to exclusive information which may be utilized by the employer in the collective bargaining process, and they should properly be excluded from the bargaining unit.** (emphasis added)

There are two points which are of utmost importance in this decision.

(1) It is the employe's close continuing relationship with public officers or representatives associated with collective bargaining which

controls an employe's contact with school district information related to collective bargaining.

(2) The fact that an employe may only potentially be in a position to gain access to exclusive information which may be utilized by the employer in a collective bargaining process will not preclude him from being considered a confidential employe within the definition of Act 195.

In a case involving the Chambersburg Area School District (See *Negotiation Guidelines*, Vol. VI, No. 21) the PLRB issued an order that provided for excluded supervisory status of employes with titles of "team leaders" and "department chairmen".

Job description and function is key

The position description, and actual job function, are the keys to the appropriate exclusion, or inclusion, of a given job in an appropriate bargaining unit. *Negotiation Guidelines*, Vol. II, No. 26 said: "The makeup of a bargaining unit is not a negotiable subject. The employer, by virtue of the manner in which he assigns responsibilities and authority throughout the employe body with which he works, determines what positions are supervisory or confidential."

The employer determines who will perform supervisory functions and who will perform functions of a confidential nature. Look again at the language of sections 301 (6) and 301 (13) of Act 195 for definitions that govern. The employer cannot gain exclusion of positions through artificial creation of job descriptions and job functions which do not in fact exist. However, if the job description has been properly written to describe either supervisory functions or confidential employe functions, and if in fact the job descriptions accurately describe the job to be performed, then these positions can be properly excluded from the bargaining unit. **This exclusion can come about at any point in time when the employer determines that, in fact, a supervisory position or a confidential employe position does exist.**

Thus, the employer can properly establish such positions at any time. The union representing the bargaining unit so affected can, of course, challenge such a determination with the PLRB which will make the final determination. However, this does not inhibit the employer from taking the management action deemed necessary by the employer.

Job title not significant

Negotiation Guidelines, Vol. II, No. 19 (March 27, 1972) gave examples of various kinds of job titles which will generally be considered excluded positions, **not on the basis of job title but on the basis of job function.** Job titles are relatively insignificant in determining whether or not a given position is, in fact, an excluded position.

It should be remembered that **the amount of time spent in performing supervisory functions**, or functions of a confidential nature, **is not a controlling factor.** The employer is entitled to, and must have, an adequate body of supervisory and confidential employes to accomplish the

mission of the employer. Positions that effectively function in any one of the various areas set forth in sections 301 (6) and 301 (13) of Act 195 will generally be found to be excluded positions.

Two examples will help illustrate this. Personal secretaries are generally confidential employes who work in "close continuing relationship" with superintendents, business managers, personnel managers, maintenance or buildings and ground supervisors, and building principals who, in turn, are supervisors and effectively hire, fire, transfer, direct the work effort, and act upon the grievances of employes under their supervision.

A head custodian, a head teacher, a department chairman, or a head cafeteria worker will be excluded as a supervisory person if, in fact, that person does perform **any** of the functions that constitute a supervisory position.

Note: Negotiation Guidelines *11-10-70-1, 5-18-71-18, Vol. II, No 3, Vol. II, No. 13, Vol. II, No. 19 and Vol. II, No. 26 all contained suggestions regarding makeup of an appropriate bargaining unit. Especially Vol. II, No. 26 (May 15, 1972), is worthy of review.*

Wage and hour provisions

Prior to February 1, 1967, employes of public elementary and secondary schools were outside the scope of the Fair Labor Standards Act, as the act did not apply to employes of any state or political subdivision of a state. Public school employes were brought under the act on February 1, 1967, by the 1966 amendments. In June 1968, the U.S. Supreme Court in *Maryland vs. Wirtz*, 392 U.S. 183, found this provision constitutional.

As this publication goes to press, the Supreme Court has reversed its former decision in the Maryland case.

In a court action brought under the title of *National League of Cities, et al. vs. W. J. Usery, Jr., Secretary of Labor*, the Supreme Court determined that both the 1974 amendments to the Fair Labor Standards Act and the 1968 amendments covered by the Maryland case were unconstitutional. In this latest decision the court said: "Congress may not exercise that (its) power so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made. We agree that such assertions of power, if unchecked, would indeed, as Mr. Justice Douglas cautioned in his dissent in *Wirtz*, 'allow the National Government (to) devour the essentials of state sovereignty.'"

The effect of the *National League of Cities* case is to remove state and local government employes, including the employes of the public schools, from coverage of the Fair Labor Standards Act.

Position descriptions and assignment of personnel

Proper job descriptions, or position descriptions, and assignment of personnel to these positions is a function of local school officials, not of

federal agency investigators. Local school district officials continue to have the responsibility for determining what positions will exist, and what levels of wages or salaries will be paid, above any required minimum wage that may result from state law. (Don't confuse this with wages or salaries that may result from a bargaining agreement — a quite different and separate issue.)

The key to proper compliance with such law (and equal pay for equal work law) is that adequate job descriptions must exist that support, or legitimatize, differences in pay rates. For example, one job description may depict one class of custodian paid at one rate, and a different job description may describe another level custodian paid at a different rate. There is no requirement that **all** custodians, or **all** secretaries, or all of any other class of employe be paid at the same pay rate, so long as there is supportable evidence, borne out in fact, that there are indeed differing levels of skill or responsibility associated with such determinations. **The various job descriptions should properly depict these different skill levels.**

Effect of court decisions

Since the enactment of Act 195 a substantial body of court decisions have helped to sharpen and define various provisions of the law. Coupled with court decisions that have affected the law, though not directly related to the law, this body of court determination has become an important adjunct to the law itself.

Recited on the following pages, 127 — 136, is the identification of some of the precedent-setting court rulings that have occurred during this period of time. This recital of various decisions serves as a permanent reference of touchstones on many of the fundamental issues involved.

Precedent-setting court rulings under Act 195

March 2, 1970 [School Law No. 7]
The United States Supreme Court rules that the National Labor Relations Board hasn't any authority to order an employe to agree to a union's demand for a union dues check-off provision in a collective bargaining agreement.

December 9, 1970 [School Law No. 13, 1971]
Pennsylvania Labor Board establishes appropriate bargaining unit for school district employes. Loyalsock Township School District.

January 18, 1971 [School Law No. 4]
Lackawanna County Court of Common Pleas enjoins strike by Scranton Federation of Teachers — violation of Act 195.

February 8, 1971 [School Law No. 14]
The labor board orders that the city of Williamsport must bargain with the "certified" city highway employes. The essence of this order reveals the requirement in good faith with the exclusive representative of his employes even though initial bargaining might be requested after the last day in which complete utilization and exhaustion of the impasse procedure might be possible under Act 195.

March 21, 1971 [School Law No. 24]
Allegheny County Court of Common Pleas enjoins strike of South Allegheny Education Association.

April 12, 1971 [School Law No. 18]
Washington County Court of Common Pleas orders striking Ringgold School District teachers back to work — violation of the impasse procedure of Act 195.

April 30, 1971 [School Law No. 34]
Clearfield County Court of Common Pleas grants injunction against striking Dubois Area School District teachers.

May 4, 1971 [School Law No. 29]
Pennsylvania Labor Board rules that an impasse does not change the requirement of law to bargain in "good faith" until an agreement is reached. Armstrong School District.

May 13, 1971 [School Law No. 47]
Jefferson County Court of Common Pleas makes permanent a temporary injunction against striking teachers of Brockway School District.

May 28, 1971 [School Law No. 40]
York County Court of Common Pleas makes permanent the injunction against striking York Suburban teachers.

June 1, 1971 [School Law No. 41]
Dauphin County Court of Common Pleas orders striking city employes of Harrisburg back to work — violation of impasse procedures under Act 195.

June 15, 1971 [School Law No. 46]
Washington County Court of Common Pleas refuses to force Ringgold School District to reopen school calendar, which was incomplete because of a teacher strike. Teachers lose pay as a result.

September 22, 1971 [School Law No. 51]
County court enjoins strike by Allentown teachers — and Commonwealth Court dismisses application for supersedeas by Allentown Education Association.

September 22, 1971 [School Law No. 52]
Common Pleas Court judge in Philadelphia rules City School Board must pay the salaries of the sponsors of all extracurricular activities — even if the activity is dropped — since salaries are listed in the contract.

October 18, 1971 [School Law No. 54]
The Pennsylvania Labor Board rules on unfair labor charges brought by State College Area Education Association and, in a precedent-setting move, establishes that 21 issues are policy items on which bargaining is not required by public employers.

November 8, 1971 [School Law No. 57]
The United States Supreme Court affirms a three judge federal Appeals Court ruling that government employes do not have a constitutional right to strike. The court dismissed an appeal by the United Federation of Postal Clerks of its suit against Postmaster General Winton M. Blount challenging the constitutionality of federal laws barring federal workers from striking.

December 20, 1971 [School Law No. 6, 1972]
Labor Board rules that "agency shop" is not allowable under Act 195 and, therefore, the union cannot require an employe to join and pay union dues. Teamsters Local No. 8 and Penn State University.

January 18, 1972 [School Law No. 10]
Labor Board issues final order in Canon-McMillan District case claiming that the wages associated with extracurricular activities are bargainable.

January 28, 1972 [School Law No. 6]
The labor board rules that "agency shop" is not allowable under Act 195 and, therefore, the union cannot require an employe to join and pay union dues.

February 7, 1972 [School Law No. 23]
Unfair labor practice charge against Penn-Delco School District dismissed. Labor Board ruled that the school district did not commit an unfair labor practice by entering the employe union caucus "to advance the stage of negotiations by explaining specific parts of the contract."

February 22, 1972 [School Law No. 17]
Arbitrator requires school board to enforce "maintenance of membership" provision in contract retroactively. Bedford Area School District.

May 10, 1972 [School Law No. 46]
Relying on the National Labor Relations Board's Excelsior rule, the Pennsylvania Labor Relations Board holds that the Jeannette District Memorial Hospital committed an unfair labor practice under state law by refusing to furnish the addresses of eligible voters to the Service Employes prior to a representative election.

May 15, 1972 [School Law No. 26]
Arbitrator rules in favor of school district and denies grievant's claim of payment for graduate credits earned prior to his receiving post-graduate degree.

May 17, 1972 [School Law No. 29]
Commonwealth Court decides lower court has no jurisdiction with regard to ordering binding arbitration where a labor dispute exists between school teachers and a school district. Armstrong School District.

May 17, 1972 [School Law No. 30]
Commonwealth Court dissolves injunction issued by common pleas court, which had enjoined a strike by local teachers' organization. Commonwealth Court said there was no clear and present danger to the health, safety, and welfare in this case. Armstrong School District.

May 19, 1972 [School Law No. 48]
Arbitrator orders school district to compensate employes for two hours at their regular hourly rate for attendance at the school district's open house. Canon-McMillan School District.

May 22, 1972 [School Law No. 31]
Arbitrator orders Freeport Area School District to fire teacher who refused to pay union dues, according to the "maintenance of membership" provision in the contract.

June 26, 1972 [School Law No. 38]
PLRB issues final order on unfair labor charges brought by State College Area Education Association and reaffirms the findings and conclusions in its Nisi Decision of October 14, 1971 on 16 items, declaring such items as non-bargainable.

July 26, 1972 [School Law No. 51]
Court assesses Armstrong Education Association $5,000 in fines for contempt of court and further excludes from such penalty teachers that reported for work during strike.

August 10, 1972 [School Law No. 59]
Labor Board rules that teacher preparation is a matter of inherent managerial policy and finds the Nazareth Area Education Association has committed an unfair labor practice for continuing to propose a contract provision providing for teacher preparation time.

November 7, 1972 [School Law No. 65]
Judge R. Paul Campbell of Centre County Court sustains State College School District's position that all 21 items in dispute between the school district and the union are non-bargainable.

December 1, 1972 [School Law No. 72]
Order of Cambria County Court makes permanent an injunction against the Northern Cambria Education Association, for the reason that the teacher strike created a clear and present danger to the welfare of the public.

December 21, 1972 [School Law No. 1, 1973]
Cambria County Court says school district is not required to complete 180 days to satisfy teachers' demands. The Court, in the case referring to the Northern Cambria School District said, ". . .Only the school district may establish the school calendar. . . ."

January 18, 1973 [School Law No. 20]
Pennsylvania Labor Relations Board rules on the confidential employes of the West Shore School District.

March 13, 1973 [School Law No. 23]
Commonwealth Court rules 4-3 that the eight-week Philadelphia teachers' strike created a threat to the health, safety and welfare of the public. The Court upheld a lower court injunction ordering the teachers back.

April 11, 1973 [School Law No. 44]
Pennsylvania Labor Relations Board rules that the news media may not be present at collective bargaining sessions. Case involves Bethlehem Area School District.

June 11, 1973 [School Law No. 51]
The state Supreme Court decides that appeals from the Pennsylvania Labor Relations Board shall go to the Court of Common Pleas, as prescribed by Act 195 (1970). Such appeals shall not go the Commonwealth Court.

July 30, 1973 [School Law No. 71]
The Pennsylvania Labor Relations Board rules that full-time substitutes are included in the bargaining unit of the Carlyton School District.

July 30, 1973 [School Law No. 74]
The Pennsylvania Labor Relations Board orders the Freeport Area School District to fire a teacher who did not pay union dues according to the "maintenance of membership" clause of the contract.

August 27, 1973 [School Law No. 81]
Commonwealth Court declares that the Ellwood City School District may not dismiss a principal who had been a tenured high school teacher and who refuses to withdraw his membership from the teacher union.

August 28, 1973 [School Law No. 83]
The Pennsylvania Labor Relations Board ruled that an employer must bargain with a duly selected bargaining agent, even though the selected representative is not a member of the unit he represents.

September 4, 1973 [School Law No. 86]
The Pennsylvania Labor Relations Board ruled that the Brownsville Area School District must comply with an arbitrator's award, according to Section 903 of Act 195.

September 4, 1973 [School Law No. 92]
The Commonwealth Court has ruled that school districts are not required to make up lost school days if they are shut down by a teachers' strike or by other circumstances "not within their control."

September 11, 1973 [School Law No. 96]
The Centre County Court of Common Pleas reversed a Pennsylvania Labor Relations Board ruling that ordered the Bellefonte Area School District to reinstate a teacher and pay her lost wages, the teacher never having been hired in accordance with the requirements of the School Code.

September 11, 1973 [School Law No. 97]
The Pennsylvania Labor Relations Board ruled that the City of Pittsburgh did not commit an unfair labor practice in the discharge of certain employes, since the legislative branch, or city council, did not ratify a portion of an agreement with a certified bargaining agent calling for the retention of such employes in accordance with Section 901 of Act 195, which requires ". . .Any provisions of the contract requiring legislative action will be effective only if such legislation is enacted."

October 2, 1973 [School Law No. 99]
The Pennsylvania Labor Relations Board ruled the Bristol Township Education Association guilty of unfair labor practices by continuing to press for bargaining over nonbargainable items.

October 29, 1973 [School Law No. 100]
Crawford County Court's president judge issued an injunction against the striking teachers of Crawford Central School District, declaring, " ...that the teachers were insisting upon bargaining items that the law, amplified by appellate court decision, gave them no right to bargain."

October 29, 1973 [School Law No. 101]
The Pennsylvania Labor Relations Board ruled again that school districts are not required to bargain the school calendar, and further, that teachers are not to be paid for days engaged in a strike.

October 30, 1973 [School Law No. 104]
The Pennsylvania Labor Relations Board ruled that an employe may not be dismissed for failure to join the union. The board also ruled that signing an authorization card for representation does not constitute membership in the union.

January 28, 1974 [School Law No. 2]
The Pennsylvania Labor Relations Board ruled that the Richland School District did not commit an unfair labor practice by refusing to bargain on

such items as: (1) sick-leave bank (the board reversed itself on the sick-leave bank item), (2) binding arbitration, (3) sabbatical leave, (4) school work year, (5) teaching load, (6) class size, (7) notification of teaching schedule, and (8) flexible scheduling. The PLRB also held that the Richland Education Association did not commit an unfair labor practice by submitting these items for bargaining. To be an unfair labor practice, it must be demanded that the items be bargained after they are initially presented to the school district.

February 25, 1974 [School Law No. 7]
Commonwealth Court finds that the Eastern Lancaster School District cannot require first level supervisors to choose between union membership and their positions as first level supervisors.

March 1, 1974 [School Law No. 11]
The Pennsylvania Labor Relations Board orders AFSCME to exhaust the impasse procedures of Act 195 before engaging in a strike against the borough of Aliquippa.

March 14, 1974 [School Law No. 15]
The Commonwealth Court rules that the Canon-McMillan School District must bargain over the wages for extracurricular activities.

March 18, 1974 [School Law No. 18]
The Pennsylvania Labor Relations Board rules that the Abington School District did not commit an unfair labor practice by paying nonstriking teachers for the time worked during a strike. The union contended the school district could not extend its calendar two days and thereby pay nonstriking teachers more wages than striking teachers.

April 30, 1974 [School Law No. 27]
Pennsylvania Labor Relations Board orders Muhlenberg Township School District to bargain on economic issues after budget submission date has passed.

April 30, 1974 [School Law No. 28]
Commonwealth Court overturns Pennsylvania Labor Relations Board decision that ordered the Jeannette District Memorial Hospital to supply addresses of its employes to the union.

May 29, 1974 [School Law No. 37]
Pennsylvania Labor Relations Board issues final order declaring the Bristol Township Education Association was guilty of an unfair labor practice by insisting on bargaining items that were not required to be bargained by the Bristol Township School District in accordance with Section 702 of Act 195.

May 29, 1974 [School Law No. 38]
Pennsylvania Labor Relations Board rules that Scranton School District may not disallow individually processed grievances.

July 30, 1974 [School Law No. 45]
United States Supreme Court rules that all classifications of "managerial

employes" or "supervisors" are not covered by the National Labor Relations Act, regardless of how low they are in the hierarchy.

August 21, 1974 [School Law No. 60]
Pennsylvania Labor Relations Board rules that bargaining unit members recently promoted to department chairmen in the Elizabethtown School District do not have to pay union dues. The Pennsylvania Labor Relations Board held it was not an unfair labor practice for the school district to restrict applications for departmental positions to employes who do not have a "conflict of interest," and the association cannot enforce a maintenance of membership provision against a member who has left the unit covered by the contract.

August 21, 1974 [School Law No. 61]
Pennsylvania Labor Relations Board rules that Carlynton School District does not have to "meet and discuss" with first level supervisors who have not been represented by a certified group.

August 15, 1974 [School Law No. 67]
Cambria County Court rules that Section 1124 of the School Code, not a collective bargaining agreement, governs the suspensions of employes.

September 16, 1974 [School Law No. 76]
Pennsylvania Labor Relations Board dismisses complaint of Chichester Education Association, which had charged the Chichester School District with an unfair labor practice for terminating fringe benefits of employes engaged in a strike.

September 20, 1974 [School Law No. 79]
Pennsylvania Labor Relations Board rules that Coatesville School District did not commit an unfair labor practice by terminating bus service in order to reduce the operating costs of the school district.

September 23, 1974 [School Law No. 80]
Pennsylvania Labor Relations Board rules that once an employer chooses to bargain a permissive matter (one not required to be bargained) he may not thereafter have a second chance to exercise this option.

September 24, 1974 [School Law No. 82]
Mercer County Court rules the West Middlesex Area School District does not have to make up five days of instruction which were lost in early September 1973 due to a teachers' strike.

October 3, 1974 [School Law No. 85]
Butler County Court reverses decision of the Pennsylvania Labor Relations Board, which had ordered the Mars Area School District to rehire 11 teacher aides that the school district had dismissed.

January 22, 1975 [School Law No. 1]
Pennsylvania Supreme Court rules that dating a contract retroactively cannot restrict an employe's withdrawal from a union if the employe exercises his option to withdraw from the union when no contract was in force in accordance with Section 301 (18) of Act 195 (1970).

January 23, 1975 [School Law No. 2]
Delaware County Court upholds dismissal of temporary professional employe by Interboro School District. The court held: (1) that appeals of temporary professional employes dismissed must be taken to the county court rather than the secretary of education; (2) the superintendent can delegate the rating of employes to other supervisors; and (3) anecdoted records are not required as a mandatory prerequisite to legal termination of contract of employment.

January 29, 1975 [School Law No. 7]
Lycoming County Court rules citizen cannot seek injunctive relief of a strike by teachers in the Williamsport Area School District.

February 4, 1975 [School Law No. 11]
Commonwealth Court rules the number of cases assigned to employes of the Department of Public Welfare is not a bargainable matter. The court relied on the decision in *Pennsylvania Labor Relations Board vs. State College Area School District* for the proper interpretation of the provisions of sections 701 and 702 of Act 195 (1970).

February 13, 1975 [School Law No. 15]
Blair County Court overrules the PLRB decision declaring payroll clerks and secretaries to building principals of the Altoona Area School District are confidential employes. The court determined that the PLRB improperly referred to the National Labor Relations Board's definition of confidential employe rather than follow Pennsylvania's Act 195 (1970) definition of confidential employe as it appears in subparagraph (13) of Section 301.

February 18, 1975 [School Law No. 19]
Pennsylvania Supreme Court affirms decision of Centre County Court granting a Pennsylvania State University laboratory technician the right to a job without being compelled to pay an agency fee to a union.

April 2, 1975 [School Law No. 28]
Commonwealth Court rules that Pennsylvania Rules of Judicial Administration (Pa. R.J.A.) No. 2101 encompasses within its provisions judicial review of arbitration decisions which arise out of the grievance procedure as mandated by Section 903 of Act 195 (1970). Also, the court held that the arbitrator exceeded his authority when he ordered the Community College of Beaver County to rehire certain suspended employes on a part-time basis.

April 9, 1975 [School Law No. 33]
Commonwealth Court rules that borough of Wilkinsburg may accept bids to provide the sanitation service and the borough does not have to bargain job security under such conditions with the union.

April 23, 1975 [School Law No. 42]
The Pennsylvania Supreme Court, after nearly two years of deliberation on the landmark labor relations dispute between the State College Area School District and the State College Education Association, remands the

21 items under dispute (as to whether or not the school district is required to bargain them) back to the PLRB to be determined on an issue-by-issue basis.

June 23, 1975 [School Law No. 48]
Adams County Court remands case to PLRB to redetermine whether head coaches, department heads and athletic directors possess and/or perform any supervisory functions, and hence should be excluded from the bargaining unit. Court says PLRB used incorrect standard of determining whether such employes are supervisors.

June 23, 1975 [School Law No. 50]
Lancaster County Court rules Warwick School District does not have to submit a contract matter outside the grievance procedure to binding arbitration. The union had argued for the continuation of certain fringe benefits after the expiration of a collective bargaining contract. The labor board ruled the school district had not committed an unfair practice by denying the request. Consequently, the union sought binding arbitration on the matter.

August 1, 1975 [School Law No. 60]
Commonwealth Court rules that Leechburg School District does not have to make up four days missed in early September because of a teachers' strike.

August 29, 1975 [School Law No. 62]
Allegheny County Court dismisses criminal charges brought against the superintendent of Moon Area School District for replacing striking workers with substitute personnel. Judge A. J. Strauss held that the superintendent had not hired strike breakers but "replacements" which the judge said is "his admitted common law right."

August 22, 1975 [School Law No. 65]
In an unanimous opinion, Commonwealth Court rules that 15 state employes may file complaints in equity over the state's continued deduction of union dues after these employes had resigned from the union because the union security contracts covering them had expired.

August 22, 1975 [School Law No. 70]
Commonwealth Court rules suspension of employes is governed by Section 1124 of the School Code and not by a collective bargaining agreement. In affirming the lower court and the Portage Area School District the court held that the provisions of the School Code shall govern the manner in which the job security, job progression and reduction in force practices shall be effected.

October 23, 1975 [School Law No. 78]
Commonwealth Court upholds trial court in reversing Pennsylvania Labor Relations Board decision that unilateral termination of school district's 11 teacher's aides violated Act 195.

October 22, 1975 [School Law No. 79]
The Pennsylvania Labor Relations Board rules that Cumberland Valley School District must continue to pay insurance benefits after the employe contract has expired.

October 31, 1975 [School Law No. 83]
Cumberland County Court rules Cumberland Valley School District's contract provision to pay more than half salary for employes on sabbatical leave is invalid.

December 10, 1975 [School Law No. 87]
The Pennsylvania Supreme Court rules that a nontenured Philadelphia teacher may not be discharged without a hearing before an arbitrator because the collective bargaining contract contained a "just cause" provision, and a grievance filed for such arbitration is appropriate.

January 16, 1976 [School Law No. 2]
Pennsylvania Labor Relations Board reverses prior nisi decision regarding Beaver County Community College's refusal to submit a grievance of a probationary employe to binding arbitration.

March 12, 1976 [School Law No. 12]
Commonwealth Court rules Harrisburg City's establishment of merit raises for certain employes was not an unfair labor practice under Act 195 (1970).

April 20, 1976 [School Law No. 18]
Commonwealth Court sustains Blair County Court's reversal of Pennsylvania Labor Relations Board decision and rules that secretaries to principals and payroll clerks of the Altoona Area School District are "confidential" employes.

April 30, 1976 [School Law No. 28]
Commonwealth Court upholds refusal of West Shore School District to allow a teacher to inspect own personnel records.

Pennsylvania Labor Relations Board
Rules and Regulations

Pursuant to Article V, Section 502 of the
Public Employe Relations Act, July 23, 1970
Act No. 195

Adopted October 8, 1970
Approved October 9, 1970
Amended September 10, 1971
Amended August 30, 1975

The rules of the Labor Board are included here as a permanent reference so that those responsible for initiating various action before PLRB may have this convenient source of information for guidance.

§95.1. Definitions.

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act — The Public Employe Relations of the Commonwealth (43 P.S. § 1101.201 et seq.).

Board — The Pennsylvania Labor Relations Board.

Hearing Examiner — Any person duly appointed or designated by the Board to conduct a hearing.

Party — Any person, employe, group of employes, organization or public employer filing a charge, petition, request or application under these rules and regulations; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under the act; or any person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Board, secretary, or a hearing officer, but nothing herein shall be construed to prevent the Board, or any designated officer, from limiting participation by any party in the proceedings to the extent of his interest.

Petition — Any petition for investigation and certification or decertification of a collective bargaining representative filed pursuant to the act and the provisions of this Chapter.

Showing of interest — A designated percentage of public employes in an allegedly appropriate bargaining unit, or a bargaining unit determined to be appropriate, who are members of an employe organization or have designated it as their exclusive bargaining representative, or have signed a petition requesting an election for certification or decertification of public employe representatives. Such designations shall consist of written authorization cards or petitions, signed by employes and dated, authorizing an employe organization to represent such employes for the purpose of collective bargaining or requesting an election for certification or decertification of public employe representatives, current dues records, or other evidence approved by the Board.

Unfair practice — Any practice prohibited by the Public Employe Relations Act.

INSTITUTION OF REPRESENTATION PROCEEDINGS

§95.11. Request for certification

(a) A public employe, employe organization, or group of employes and the public employer may, when the public employe organization represents a majority of the employes in an appropriate unit, jointly submit to the Board a request for certification upon a form to be supplied by the Board.

(b) The request for certification shall set forth the following:

(1) The name, address, telephone number of the public employer and the person to contact including his title, if known.

(2) The name, address and affiliation, if any, of the employe organization and the name, address and telephone number of its representative.

(3) A description and factual statement in support of the unit claimed to be appropriate for the purpose of exclusive representation.

(4) The budget submission date of the public employer.

(5) The signatures of the parties, including their titles and telephone numbers.

(6) A statement that the employe organization represents a majority of the employes in the unit and the method of determining such representative majority. Proof of such representative majority shall be submitted to the hearing examiner, if requested.

(7.) The names and addresses of all known employe representatives, individuals, labor organizations or groups claiming to represent any of the employes in the bargaining unit.

(8.) Five days prior to the submission to the Board of the joint request for certification, the employer shall post on the bulletin boards at all locations where the employes in the requested unit work, a copy of the joint request for certification and a statement that such request will be filed with the Board, 1611 Labor and Industry Building, Harrisburg, Pennsylvania 17120, for the purpose of securing from that Board a certification of _____ (Name of employe representative_____ as the exclusive bargaining representative for the employes within such unit.

(9) A 15% showing of interest among employes within such requested unit is required before any employe representative may be permitted to intervene.

(10) Any other relevant facts.

CROSS REFERENCES

This section cited in 34 Pa. Code §95.44 (relating to interventions).

§95.12. Notice for an election request.

(a) A public employe, a group of public employes, or an employe organization may submit, in writing to a public employer, upon forms prepared by the Board, a notice for an election request.

(b) A notice for an election request shall contain the following:

(1) A statement that 30% or more of the public employes in an appropriate unit desire to be exclusively represented for collective bargaining purposes by a designated representative.

(2) A description of the unit deemed appropriate.

(3) A request for a consent election.

§95.13. Consent to the election request.

(a) If a public employer consents to an election request by a public employe, a group of public employes, or an employe organization, such consent shall be given in writing to the party giving notice within ten days of the receipt of an election request.

(b) Upon consent to an election request a joint election request shall be submitted to the Board, in triplicate, upon forms prepared by the Board, which shall include the following:

(1) A description and factual statement in support of unit deemed appropriate.

(2) The basis for alleging a 30% interest or more.

(3) A list of all unit employes prepared by the employer in such order as requested by the Board with occupations or classifications of those agreed upon as eligible to vote.

(4) Suggested times and places of holding the election.

(5) The budget submission date of the public employer.

(6) Five days prior to the submission to the Board of the joint election request, the employer shall post on the bulletin boards at all locations where employes in the requested unit work, a copy of the joint election request and a statement that the request will be filed with the Board, 1611 Labor and Industry Building, Harrisburg, Pennsylvania 17120, for the purpose of securing from that Board a certification of _____ (Name of employe representative) _____ as the exclusive bargaining representative for the employes within such unit.

(7) A 1.0% showing of interest among employes within such requested unit is required before any other employe representation may be placed on the ballot. A 10% showing of interest among employes within such requested unit is required before any other employe representative may be permitted to intervene as a party.

(8) If a public employer refuses to consent within the 10 day period to an election, the party making the request may file a petition for

representation election. A public employer may file a petition for representation election if after receiving a notice for an election request the moving party thereafter fails to submit a joint election request within 10 days after consent is given by such employer.

The provisions of this §95.13 amended September 10, 1971, 1 Pa. B. 1805.

§95.14. Contents of election request.

A petition for representation election shall, when filed by a public employe, employe organization, a group of public employes, or a public employer, contain the following:

(1) The name, address, telephone number of the public employer, and the person to contact including his title, if known.

(2) The name and affiliation, if any, of the petitioner and its address and telephone number.

(3) A description and factual statement in support of the unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employes to be included and those to be excluded and the approximate number of employes in such unit.

(4) The date of the giving of the notice for election request and date it was accepted or declined by the public employer or a statement that no reply has been received.

(5) The name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable contract, if known to the petitioner.

(6) The budget submission date of the employer.

(7) The signature of the representative of petitioner, including his title and telephone number.

(8) A statement, if appropriate, of the showing of interest of not less than 30% of the employes in such unit and the method of ascertaining such showing of interest. Proof of this statement shall be submitted to the hearing examiner, if requested.

(9) The names, addresses and telephone numbers of all known represenatives, individuals, labor organizations or groups claiming to represent any of the employes in the bargaining unit.

(10) A 1.0% showing of interest among employes within such requested unit is required before any other employe representative may be placed on the ballot. A 10% showing of interest among employes within such requested unit is required before any other employe representative may be permitted to intervene as a party.

(11) Any other relevant facts.

§95.15. Disclaimer of interest.

In the event any employe organization shall, at any point prior to the issuance of an order for election, file a disclaimer of interest [on a form provided by the Board] with the Board, the Board may either dismiss that petition for election or drop the name of such employe organization from the ballot, if the conduct of the employe organization is consistent with such disclaimer.

§95.16. Employes' names and addresses.

Following the determination, by the Board, of the appropriate unit as required by Article VI of the Act, the Board, or its duly authorized agent, shall have the right to direct the employer to submit forthwith to the Board a list of the names and addresses of the employes in the appropriate unit, such list to be made available by the Board to any party to the proceeding who requests it.

The provisions of this §95.16 amended May 17, 1975, 5 Pa.B.1301.

§95.17. Validity of showing of interest.

The showing of interest submitted shall not be furnished to any of the parties. The Board or its agents shall determine the adequacy of the showing of interest and such decision shall not be subjected to collateral attack in any hearing.

§95.21. Petition by employes.

A petition by a public employe, or a group of public employes, for decertification of public employe representative shall be on the form supplied by the Board and contain the following:

(1) A statement alleging that the employe representative certified by the Board, or currently recognized by the public employer, no longer represents a majority of the employes in the collective bargaining unit in which it is currently recognized or certified.

(2) A statement of the showing of interest of not less than 30% of the employes in the unit and the method of ascertaining such showing of interest. Proof of this statement shall be submitted to the hearing examiner, upon request. A showing of interest shall indicate that the employes no longer desire to be represented for the purpose of collective bargaining by the currently recognized or certified employe representative.

(3) The name and address of the employer.

(4) The name and address of the petitioner.

(5) The name and address of the incumbent representative.

(6) The date of expiration of the contract.

(7) The number of employes in the unit.

(8) The date of the last election.

(9) Any other relevant facts.

§95.22. Petition by employers.

A petition by a public employer for decertification of a public employe representative shall be on a form supplied by the Board and contain the following:

(1) A factual statement indicating a good faith doubt of the majority status of the public employe representative.

(2) The name of the currently recognized or certified public employe representative.

(3) The name and address of the employer and a description of the bargaining unit involved.

(4) The general nature of the business of the employer.

(5) The name and address of the incumbent representative.

(6) The date of expiration of the contract.

(7) The number of employes in the unit.

(8) The date of the last election.

(9) Any other relevant facts.

§95.23. Unit clarification. Petition for clarification of bargaining unit or a petition for amendment of certification under Articles I and VI of the Act; who may file; where to file; withdrawal.

Where no question of representation exists, a petition for clarification of an existing bargaining unit or a petition for amendment of certification may be filed by the collective bargaining representative or by the public employer.

(a) A petition for unit clarification shall contain the following:

(1) The name of the employer and the name of the collective bargaining representative.

(2) The address of the employer.

(3) A description of the present bargaining unit and if the bargaining unit is certified, an identification of the existing certification.

(4) A description of the proposed clarification.

(5) The names and addresses of any other person or employe organizations who claim to represent any employes who claim to represent any employes affected by the proposed clarifications, and brief descriptions of the contracts, if any, covering any such employes.

(6) The number of employes in the present bargaining unit and in the unit as proposed under the clarification.

(7) The job classifications of employes as to whom the issue is raised, and the number of employes in each classification.

(8) A statement by Petitioner setting forth the reasons for requesting the clarification.

(9) The name, affiliation, if any, and address of the Petitioner.

(10) Any other relevant facts.

(b) A petition for amendment of certification shall contain the following:

(1) The name of the employer and the name of the certified employe organization involved.

(2) The address of the employer involved.

(3) Identification and description of the existing certification.

(4) A statement by Petitioner setting forth the details of the desired amendment and reasons therefor.

(5) The names and the addresses of any other person or employe organization claiming to represent any employes in the unit covered by the certification and brief description of the contracts, if any, covering the employes in such unit.

(6) The name, affiliation, if any, and address of the Petitioner.

(7) A brief description of the process utilized in carrying out the affiliation.

(8) Any other relevant facts.

The provisions of this § 95.23 effective May 17, 1975, 5 Pa. B. 1302

UNFAIR PRACTICES PROCEEDINGS

§95.31. Charges.

(a) All charges shall be in writing on forms supplied by the Board and shall be signed and sworn to before any person authorized to administer oaths. An original and three copies of the charge shall be filed with the Board by one or more public employes, or any employe organization, acting in their behalf, or by a public employer.

(b) The charge shall include the following information:

(1) The name, address, telephone number and affiliation, if any, of the charging party, and the title of any representative filing the charge.

(2) The name, address and telephone number of the respondent, or respondents, and any other party named in the charge.

(3) A clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals

involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the act alleged to have been violated.

(c) After a charge has been filed, if it appears to the Board that formal proceedings in respect to the charge should be instituted, the Board, or any member of the Board, or the regional director, may issue and cause to be served upon the parties a complaint in the name of the Board, stating the alleged unfair practices, and containing a notice of hearing before a hearing examiner at a place stated in the complaint and at a time not less than [20] five days after the service of the complaint unless involving charges under §§803 or 1201 (b) (6) or (7) of the act (43 P.S. §§1101.803 or 1101.1202 (b) (6) or (7)).

§95.32. Amendment of complairts and answers.

(a) At the discretion of the Board, upon due notice to all parties, any complaint may be amended, in such manner as the Board may deem just and proper, at any time before the issuance of a final decision and order, if no new cause of action is added after the statute of limitations has run.

(b) Any complaint, amended complaint, or any part thereof, may be dismissed by the Board on its own motion or any charge may with the approval of the Board, be withdrawn upon the motion of the complainant at any time before the issuance of a final decision and order, upon due notice to all parties.

(c) Subject to the approval of the hearing examiner or the Board, an answer may be amended upon motion of the party filing it at any time before the commencement of the testimony. Such motion shall be in writing, unless made at the hearing and before commencement of the testimony. A copy of such motion shall be served upon all parties. In the event the complainant is prejudiced by the amendment, a motion for continuance will be granted.

§95.33. Prosecuting authority.

All cases in which complaints are actually issued by the Board shall be prosecuted before the Board, any member of the Board, or its hearing examiner, by the representative of the employe organization or by party filing the charge, and, in addition to the charge, or in lieu of it, if the Department of Justice sees fit, by a Deputy Attorney General, especially assigned to this type of case.

§95.34. Answers.

(a) The Board recognizes that the primary purpose of pleadings is the formation of issues. Consequently, all rules pertaining to pleadings will be liberally construed toward effecting that end.

(b) No answer need be filed in representation cases.

(c) The respondent shall, except in charges provided for in sections 803 or 1201 (b) (6) or (7), of the act (43 P.S. §§1101.803 or 1101.1201 (b) (6) or (7)) file an answer to the original or amended complaint within 15 days from the service of the complaint. Answers shall be verified by the person filing them, and shall be filed with the Board at Harrisburg or at its regional offices. Copies of answers shall be served upon all parties to the proceeding. Proof of service of the answer shall be filed with the Board. A party who fails to file an answer or to specifically deny allegations in the complaint shall be deemed to admit only those averments relating to the identity of the parties; all other averments shall be deemed to be denied.

(d) In the discretion of the Hearing Examiner at the hearing or in the discretion of the Board, an answer may be amended upon motion of the party filing it, upon due notice to all parties, at any time before the issuance of the final decision and order. Such motion must be in writing unless made during the conduct of the hearing.

§95.35. New matter in the answer.

(a) All affirmative defenses, including but not limited to the jurisdiction of the Board and statute of limitations, shall be pleaded under the hearing of new matter in the answer.

(b) Allegations of new matter in the answer shall be deemed denied without the necessity of a reply.

§95.36. Offers of fact and proposals.

At any stage of a proceeding, prior to a hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Board, or any member or agent of the Board, for consideration facts, arguments, offers of settlement, or proposals of adjustment.

The provisions of this §95.36 amended September 10, 1971, 1 Pa.B. 1805.

§95.37. Dismissal

All petitions and charges shall set forth fully and specifically all the information and facts required by the act, the rules and the forms supplied by the Board. The Board may, upon any failure to comply with this section, dismiss the petition or charge without any further proceedings.

PREHEARING PROVISIONS

§95.41. Service of papers.

Service of papers by a party on other parties shall be made personally, by United States mail, by telegram, or by leaving a copy of

such papers with the person then in charge at the principal office or place of business of the person to be served. Where any attorney or representative has entered his appearance pursuant to §91.2 (a) of this Title (relating to appearances), all complaints, orders and other processes and papers shall be served on such attorney or representative and need not be served on the party.

§95.42. Filing of papers.

(a) When the act, any of the provisions of this Chapter or any order of the Board requires the filing of a motion, brief, exception, or other paper in any proceeding, such document shall be received by the Board or the officer or agent designated by the Board to receive such document before the close of business of the last day of the time limit, if any, for such filing. Any exceptions to this requirements shall be at the discretion of the Board.

(b) Charges and petitions may be filed with the principal office of the Board in Harrisburg, or with the regional office of the Board in Philadelphia or Pittsburgh. Charge and petition forms are available at all Board offices.

(c) In all actions before the Board, the first paper filed on behalf of each party shall contain an address including zip code at which service of complaints, orders and other processes and papers of the Board may be made. Thereafter, any party may file with the Board a correction which shall form part of the record in the case, setting forth a new address with zip code at which such service may be made. If he does not do so, notice sent to him by United States mail at his last address of record shall be equivalent to service.

(d) All papers, pleadings, briefs, or other documents filed with the Board shall be legibly typed, printed or otherwise legibly duplicated.

(e) An original and three copies of all papers, pleadings, briefs, or other documents to be filed with the Board shall be submitted to the Board, unless otherwise specified.

§95.43. Notice.

(a) The Board will give notice of election at least ten calendar days before the date of such election. The notice will include a description of the bargaining unit, the form of the ballot, the times and places where the election is to be held, and a list of names of those eligible to vote or reference to the places where such a list shall be filed and available for inspection.

(b) Notices may be posted by the Board officer or the Board may direct the employer to post such notices and orders and make a return of such posting.

(c) All notices shall be posted at the place of business of the employer at all locations where employes in the requested unit work. The Board may post or order the public employer to post such other orders and notices as it may deem necessary or appropriate.

§95.44. Interventions.

(a) Motions to intervene shall be in writing, specify the grounds for intervention, be signed and verified, and a copy shall be served upon all parties to the proceedings. Proof for motions to intervene shall be filed with the Board.

(b) In representation proceedings, the hearing examiner may, subject to §95.11 of this Title (relating to request for certification) permit public employers, public employes and employe organizations to participate as parties without formal intervention, upon a showing of good cause which reasonably prevented them from having filed a timely motion to intervene.

(c) The Board or any member of the Board, or the hearing examiner, as the case may be, may, by orders, permit intervention in person, by counsel, or by other representative to such extent and upon such terms as they may deem proper.

§95.45. Continuances.

(a) All motions for a continuance made prior to a hearing shall be in writing, shall be filed with the Board at Harrisburg, and shall set forth the reasons for a continuance and the position of all parties or their representatives to the request. No such motion shall be acted upon by the Board unless it is filed at least 72 hours prior to the hearing, and the ruling of the Board shall be final. Upon good cause shown, the 72 hour provision or the necessity of a written motion may be waived at the discretion of the Board.

(b) Conflicting engagements of counsel, whether before a court of record or an administrative tribunal, shall normally not constitute sufficient grounds for a continuance of any proceeding before the Board, unless the date for the appearance of counsel in the conflicting engagement was fixed before receipt of notice of the proceeding before the Board.

(c) Agreement of counsel shall not of itself be sufficient cause for the granting of a continuance.

(d) At any hearing, the hearing examiner subject to the approval of the Board, may continue the hearing from day to day, or to adjourn it to a later date or a difference place, by announcement of such change at the hearing or by other appropriate notice.

§95.46. Prehearing conferences.

In representation, decertification and unfair practice proceedings the Board, on its own motion or upon the written request of either party, may designate a member or hearing examiner to meet with the parties at a time mutually convenient to all, to conduct a prehearing conference for

the purpose of delineating the issues and, to the extent possible, agree on such facts, matters, or procedures as will facilitate and expedite the hearings, elections, or adjudication of the issues.

ELECTIONS

§95.51. Ballots.

(a) All elections shall be by secret ballot, at times, places and in such manner as the Board may direct, and shall be conducted by a designated agent of the Board, whose determination of all questions arising shall be final, subject, however, to review by the Board.

(b) Ballots shall be prepared and issued by the Board. Ballots shall contain the name of each representative and a choice of "no representative." The place of priority on the ballot shall be determined by the chronological filing or appearnce on the dockets of the Board but with the petitioner taking first priority. In a runoff election, the place of priority shall be determined by the sequence appearing on the ballot at the prior inconclusive election.

§95.52. Election watchers.

Each party to the election shall be entitled to be represented by one watcher at each polling place or by such additional watchers as the parties may agree, subject to such limitations as the Board or its duly authorized agent may prescribe. Watchers for all parties shall be employes eligible to vote. However, in the event the employer is unable to find an individual on the list of eligible voters who is willing to serve as a watcher, he may choose a nonsupervisory or other appropriate person.

The provisions of this §95.52 amended May 17, 1975, 5 Pa.B. 1302.

§95.53. Polling area.

Prior to the commencement of the election the agent of the Board shall designate the polling area and no electioneering of any kind shall take place within this area. Any violation of this requirement by any party or its representative or agent may be ground for setting aside the election.

§95.54. Voter eligibility.

All employes whose names appear upon the list certified by the Board as being a complete list of the employes within the defined appropriate unit shall be eligible to vote.

§95.55. Challenged voters.

(a) Any prospective voter may be challenged for cause.

(b) All employes whose names do not appear upon the list certified by the Board as being a complete list of the employes within the defined appropriate unit shall be challenged by the agent of the Board.

(c) A challenged voter shall vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the Board and then inserted in a special identifiable form envelope by the Board for that purpose and returned to the Board.

§95.56. Election results.

(a) In all elections a majority of the valid votes cast shall determine the employe representative designated or selected by the employes in the defined appropriate unit or the determination that no representative has been designed.

(b) The Board will conduct runoff elections expeditiously.

(c) Each party to the election shall be permitted to observe the canvass of the ballots.

§95.57. Challenges and exceptions.

[(a)] All [challenges] objections to the conduct of a party to the election or exceptions to the Board's conduct of an election shall be [by charge of unfair practice] filed [with the Board] within five working days of the holding of the election [pursuant to section 605-(6) of the act (43 P.S. §1101.605 (6))] and of the initial canvass of the ballots.

[(b)] All exceptions to the conduct of the Board in an election shall be filed within five days of the holding of the election and the Board shall immediately issue such order as required to effectuate the purposes of the act.]

COLLECTIVE BARGAINING IMPASSE

§95.61. Fact finding panels.

(a) In the event the bureau of mediation notifies the Board of the failure of the parties to have reached an agreement within the time provided by the act, the Board may, in its discretion, appoint a fact-finding panel consisting of either one or three members.

(b) Immediately following such appointment the Board shall notify the panel member or members and all parties of the appointment, requesting the panel to proceed with the holding of hearings in accordance

with the terms and conditions of the act, giving due notice of the time and place of the same in writing to all parties.

§95.62. Filing of issues.

Within five days of receipt of notice from the panel that the parties failed to reach an agreement the parties shall file with the panel written statements of the issues in dispute and their contentions with respect to their dispute. A copy of such statements shall be served upon the other parties. The matters to be considered by the panel shall be limited to those set forth in such statements.

§95.63. Hearings.

(a) The hearings before the panel shall be private and all witnesses to be heard shall be either sworn or affirmed. While the panel need not insist upon adherence to the legal rules of evidence, it shall, however, base its findings of fact and recommendations upon reliable and credible evidence produced at the hearings.

(b) The panel may grant such continuances as the circumstances require, having in mind the exigencies of the period requirements of the act.

(c) The panel shall issue its findings of fact and recommendations in writing to the parties and thereafter make them public in accordance with the provisions of the act.

[§95.64. Hearing costs.

The Board shall, at the time of the appointment of the panel, estimate the cost of the total fact-finding procedure and shall send copies of an invoice to all parties concerned on which they will be billed equally for the ½ cost of such procedure. These invoices shall be paid by the parties on or before the date of the first hearing. The per diem fees for fact-finders shall be in such amount as the Board may, from time to time, after due notice, establish.

§95.64.Fact finding and arbitration compensation.

In furtherance of the provisions of §§802, 805, 806 and 807 of the Act, the Board shall maintain a list of candidates available for service on the panels to be appointed. Prior to the appointment, Fact Finders and Arbitrators shall have filed with the Board a resume of their qualifications and requested fees for services to be rendered. All services provided by such Fact Finders and Arbitrators shall be compensated in accordance with a schedule of rates approved by the Board.

§95.65. Voluntary arbitration.

The parties may, at any period in the negotiations, agree to submit the issues to voluntary binding arbitration in accordance with the provisions of the act. Both parties shall jointly notify the Board, in writing, of this decision. The joint notice shall inform the Board of the identity of the arbitrators selected by the parties or may request the Board to assist in the selection pursuant to section 806 of the act (43 P.S. §1101.806).

§95.66. Impasses involving guards at prisons and mental institutions.

All impasses involving units of guards at prisons or mental hospitals or units of employes directly involved with the functioning of courts of this Commonwealth, unresolved by the intervention of mediation, shall be submitted to arbitration pursuant to section 805 of the act (43 P.S. §1101.805). The Bureau of Mediation shall notify the Board of such impasses and the need for invoking such arbitration.

§95.67. Arbitration costs.

(a) Each member of the panel of arbitrators selected pursuant to §806 of the Act shall be compensated at the rate of $20 per hour. Upon completion of the arbitration process, the chairman of the panel of arbitrators shall be required to submit to the Board a detailed statement setting forth the dates and time (in one-quarter hour units) spent in research, hearing and preparation of the report of the arbitrators. The arbitrator selected by either party shall not be compensated for time spent in research or in preparation of the arbitrators' report unless the chairman of the panel has certified to the Board the time spent by the panel in research or preparation of the arbitrators' report. No member of the panel of arbitrators shall receive compensation, in any amount, for time spent prior to the commencement of the hearing.

(b) In order to receive compensation as provided for by §806 of the Act and §95.67 (a) hereof, the parties must notify the Board in advance, in writing, of the name and address of each of the arbitrators selected.

(c) The chairman of the panel of arbitrators shall submit to the Board the statement of costs within 30 days from the completion of the report.

The provisions of this § 95.67 effective August 30, 1975, 5 Pa. B. 2261.

COLLECTIVE BARGAINING CONTRACTS

§95.71. Collective bargaining contracts

Copies of all collective bargaining contracts entered into between a public employer and a duly certified employe representative following the

issuance of a certification shall be filed with the Board within a period of 30 days after the date of the execution of the collective bargaining contracts.

AUTHORITY OF SECRETARY AND EXECUTIVE DIRECTOR

§95.81. Authority of secretary and Executive Director.

(a) The secretary of the Board or the Executive Director shall have authority to issue notices or orders of the Board and to certify copies of all papers and documents which are part of any of the files or records of the Board.

(b) The secretary of the Board or the Executive Director shall have authority to issue orders directing and fixing time and place of initial hearings in representation cases.

(c) The secretary or the Executive Director shall have authority to issue complaints in unfair practice cases.

(d) The secretary or the Executive Director shall, prior to the holding of a formal hearing, have authority to grant continuances for cause, subject to the provisions of §93.17 of this Title (relating to continuances).

PROVISIONS FOR FORMAL PROCEEDINGS

§95.91. Hearings.

(a) Hearing before a hearing examiner shall be subject generally to the provisions of §93.31 of this Title (relating to hearings).

(b) The transcript of the testimony in all hearings shall become part of the record if no objections to such transcript are filed with the Board within 15 days after its deposit in the United States mail. The postmark shall be conclusive evidence of the date of mailing. Objections shall specify the matter objected to and the relief sought. The Board may, in its discretion, order a hearing on the objections. The Board shall make such order as may be necessary to conform the transcript to the occurrences at the hearing and the conformed transcript shall then be duly certified by the official stenographer, shall be filed of record in the case, and shall be treated as official and part of such record for purposes of review upon appeal, and shall be considered as prima facie accurate whenever thereafter offered in evidence.

(c) Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be stated orally and shall be included in the stenographic report of the hearing. Final argument shall not be included in the stenographic report unless the hearing examiner shall so direct.

The provisions of this §95.91 amended September 10, 1971, 1 Pa. B. 1805.

§95.92. Contemptuous conduct.

The provisions of §93.32 of this Title (relating to contemptuous conduct) shall govern proceedings before a hearing examiner.

§95.93. Briefs, requests for findings of fact, and conclusions.

Briefs and requests [sic] findings of fact or conclusions may be filed with the Board within ten days after the receipt of the transcript of the testimony of the Board. Copies of any briefs or requests so submitted shall be served upon all parties to the proceeding and proof thereof filed with the Board. Extensions of time may, upon request, be permitted by the Board.

§95.94. Depositions.

(a) Witnesses at all hearings shall be examined orally under oath or affirmation, and a record of the proceeding shall be made and kept by the Board. If any witness resides outside the Commonwealth or through illness or other cause is unable to testify before the Board, its members, or hearing examiner conducting the hearing or investigation, his testimony may, upon application, be taken by deposition.

(b) Applications to take depositions under this section shall be in writing or may be made orally at a hearing. The application shall set forth the reasons why such depositions should be taken, the name and post office address with zip code of the witness, and the time and place proposed for the taking of the deposition. The Board, any of its members or hearing examiner, as the case may be, may, upon such application, issue an order allowing the taking of the deposition. Such order shall be served on all of the parties. Such deposition may be taken before any officer authorized to administer oaths by the laws of the Commonwealth or of the United States or of the place where the examination is held, including any agent of the Board authorized to administer oaths.

(c) During such depositions all objections to questions or evidence shall be deemed waived unless made at the examination of the witness. The officer shall not rule upon any objections but he shall note them on the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn or affirmed by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that such officer is not of counsel or attorney to any of the parties nor interested in the outcome of the proceeding or investigation. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver an original and a copy of such transcript, together with his certificate, in person or by United States mail to the Board, its members, or hearing examiner, as the case may be. The hearing examiner

shall rule upon the admissibility of the deposition or any part of such deposition.

(d) All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after such defect is ascertained, or, with due diligence, might have been ascertained.

§95.95. Witnesses and subpoenas.

Witness and mileage fees shall be paid by the party at whose instance the witnesses are called, which fees shall be the same as those paid in the courts of this Commonwealth. Subpoenas shall be issued and enforced in accordance with the act.

§95.96. Orders.

(a) The provisions of §93.35 of this Title (relating to orders) shall govern orders.

(b) No exceptions may be filed to Final Orders, Orders Directing Elections, or purely procedural Orders of the Board.

(c) When an election has been held, the Board will issue a decision and order stating its findings on the conduct and results of the election, and shall certify the representative that has been selected and designated or certify the results of the election, as the facts of the case may warrant.

§95.97. Motions for withdrawal.

(a) Motions for withdrawal of charges or petitions made before or after hearing and based upon settlements between employers, employes, or their respective representatives, will not be considered unless field [sic] with the Board in writing, and, if requested by the Board, the reasons for withdrawal shall be stated.

(b) Motions for withdrawal of charges or petitions may be made orally during the progress of a hearing. The reasons for withdrawal if requested by the hearing examiner, shall be stated on the record. The decision on such motions will be reserved for the Board.

(c) No charge or petition may be withdrawn at any time without the consent of the Board.

§95.98. Exceptions.

(a) Exceptions to nisi orders of the Board shall be in writing, separately stated and numbered, and shall specify with particularity the error of which complaint is made. The original shall be filed with the Board, a copy of the exceptions shall be served upon all parties to the proceeding and proof of service shall be filed with the Board.

(b) The Board may order an oral argument to be heard before it at a time and place to be set forth in such order.

(c)[b] Any party filing exceptions [shall, within 15 days of the date of such filing with the Board,] may, on or before the date set forth [for] argument, file three copies of a written brief with the Board in support of

such exceptions, and a copy thereof shall be served upon all parties to the proceeding. [Other parties have ten days from the receipt of the copy of the brief filed by the exceptant to file their answering brief, in triplicate, with the Board and shall serve a copy of the answer upon the exceptant.] On or before the date set for argument other parties may file briefs if they so desire.

[(c) The Board may, after the receipt of all written briefs, order an oral argument to be heard before it at a time and place to be set forth in such order.]

(d) Exceptions which are not advanced [in the written briefs] shall be deemed to have been waived unless the Board permits the submission of exceptions at oral argument.

§95.99. Reopening of hearing.

(a) Motions for leave to reopen a hearing because of newly discovered evidence shall be timely made.

(b) The Board may, in its discretion and upon its own motion, reopen a hearing and take further testimony at any time.

§95.100. Computation of time.

(a) When any period of time is referred to in the Act or in any rule, such period in all cases shall be so computed as to exclude the first and include the last day of such period.

(b) Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation.

§95.101. Political contributions.

(a) An employe organization which has made contributions out of funds of the employe organization either directly or indirectly to any political party or organization or in support of any political candidate for public office shall file a report with the Board which shall contain the following:

(1) A statement describing the date(s), place(s) of occurrence, amount(s), and beneficiary(ies) of such contribution(s).

(2) The signatures of the president and treasurer or corresponding principals of the employe organizations.

The provisions of this § 95.101 effective May 17, 1975, 5 Pa. B. 1302.

§95.102. Illegal contributions.

(a) Any individual who has knowledge of a political contribution or other activity by an employe organization thought to be in violation of §1701 may file a report with the Board. The report shall be signed and sworn to before any person authorized to administer oaths.

(b) The report shall contain the following information:

(1) The name, address, telephone number and affiliation, if any, of the charging party.

(2) A clear and concise statement of the facts constituting the alleged illegal contribution, including the names of the individuals involved, the name of the employe organization, and the time, place of occurrence and nature of each particular contribution or act alleged.

(c) Upon receipt of such report, if it appears to the Board that an investigation in respect to the charge should be instituted the Board shall refer such report to the Attorney General of the Commonwealth of Pennsylvania for proceedings under applicable statutes.

The provisions of this § 95.102 effective May 17, 1975, 5 Pa. B. 1302.

Sample Forms
Used by the
Bureau of Mediation
and the
Labor Relations Board

pages 157-165

Editor's Note: This form is recommended for use where 90 percent of employes want a given organization and no dispute exists on bargaining unit (15 percent may intervene).

PERA 602(a)-1 (10-70)

COMMONWEALTH OF PENNSYLVANIA
The Pennsylvania Labor Relations Board

Joint Request for Certification

IN THE MATTER OF THE EMPLOYES OF

DO NOT WRITE IN THIS SPACE
Case No.
Date Filed
ABOVE IS FOR PLRB USE ONLY

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

The Petition of the employe representative and the public employer herein respectfully sets forth:

1. That the employe representative is (state name, address, zip code, telephone number and affiliation, if any)

2. That the public employer is (state name, address zip code, telephone number)

3. That the employer has agreed to recognize the employe representative for collective bargaining purposes pursuant to Section 602 (a) of the Public Employe Relations Act based on a determination that a majority of the employes in the proposed unit desire to be represented by the employe representative, which determination is based upon (state method used to determine the desire of the majority of employes)

4. The unit proposed as appropriate for the purposes of collective bargaining is the employer unit – a subdivision of employer unit (strike out one not applicable) comprised of the following classifications of employes:

Classification	Nature of Work	Where Employed	Number of Employes

5. The proposed unit does – does not (strike out one not applicable) contain both professionals and non-professionals as defined by Section 301(7) of the Public Employe Relations Act, and does – does not (strike out one not applicable) contain guards or other personnel treated at Section 604(3) of the Public Employe Relations Act, and does not contain any employes at the first level of supervision.

6. The identifiable community of interest of the employes comprising the proposed unit is (state factual grounds such as similarity of duties and working conditions, prior collective bargaining history, extent of organization, etc.)

7. That there are no other employe representatives claiming to represent any of the employes in the proposed bargaining units except (state name, address, zip code, telephone number or write NONE)

8. The budget submission date for the public employer is _____

9. That the public employer has posted the five (5) day Notice required by the Board's Rule 3.1(h).

10. (Other relevant facts) _____

WHEREFORE, Petitioners respectfully pray that the Pennsylvania Labor Relations Board, pursuant to Section 602(a) of the Public Employe Relations Act approve the proposed unit as appropriate for purposes of collective bargaining and certify the employe representative as the exclusive collective bargaining representative for all employes in the unit.

_____	_____
Petitioner – Employe Representative	Petitioner – Public Employer
By _____	By _____
Title _____	Title _____

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

★ ★ ★

Editor's Note: Notification to employer for joint request for election.

PERA 603(a)-2 (10-70)

COMMONWEALTH OF PENNSYLVANIA
The Pennsylvania Labor Relations Board

Notification and Request for Election

Pursuant to Section 603(a) of the Public Employe Relations Act (name of public employe, group of public employes or employe organization)
Hereby notifies (name of employer) that:

1. 30% or more of the employes of the employer in an appropriate unit desire to be exclusively represented for collective bargaining purposes by the undersigned determined by (state method of determination or desire of 30% or more)

2. The unit deemed appropriate is the employer unit (strike out one not applicable) employer unit or subdivision of the comprised of the following classification of employes:

Classification	Nature of Work	Where Employed	Number of Employes

WHEREFORE, the undersigned respectfully requests the employer to join in a Petition to the Pennsylvania Labor Relations Board for an Election.

By _____

Title _____

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

★ ★ ★

Editor's Note: Employe organization and employer join in election request – 30% showing of interest – agreement on bargaining unit (1% may intervene).

PERA603(b)-3 (10-70)

COMMONWEALTH OF PENNSYLVANIA
The Pennsylvania Labor Relations Board

JOINT ELECTION REQUEST

IN THE MATTER OF THE EMPLOYES OF

DO NOT WRITE IN THIS SPACE
Case No.
Date Filed
ABOVE IS FOR PLRB USE ONLY

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

The Petition of the employe representative and the public employer herein respectfully sets forth:

1. That the employe representative is (state name, address, zip code, telephone number)

2. That the public employer is (state name, address, zip code, telephone number)

3. That the employer has received from the employe representative written notification and request for Consent election containing basis of determination of 30% interest, pursuant to Section 603 (a) Public Employe Relations Act on (date) copy of which is attached hereto.

4. That the unit deemed appropriate for purposes of collective bargaining is the employer unit or a subdivision of the employer unit (strike out one not applicable) comprised of the following classification of employes:

Classification	Nature of Work	Where Employed	Number of Employes

5. The proposed unit does or does not (strike out one not applicable) contain both professionals and non-professionals as defined by Section 301(7) of the Public Employe Relations Act, and does or does not (strike out one not applicable) contain guards or other personnel treated at Section 604(3) of the Public Employe Relations Act, and does not contain any employes at the first level of supervision.

6. The identifiable community of interest of the employes comprising the proposed unit it (state factual grounds such as similarity of duties and working conditions, prior collective bargaining history, extent of organization, etc.)

7. That there are no other employe representatives claiming to represent any of the employes in the proposed bargaining unit except (state name, address, zip code, telephone number, or write NONE)

8. The budget submission date of the public employer is _____ .

9. An agreed alphabetized eligibility list of those entitled to vote is attached hereto. (If there is any question, contact the Board).

10. That the parties hereto desire that the election be held on (date and time period) at (specific location for voting booth) and attached hereto is an agreed list of watchers.

11. That the public employer has posted the five (5) day Notice required by Board's Rule 3.3 (a) (6).

WHEREFORE, the Petitioners respectfully pray that the Pennsylvania Labor Relations Board, pursuant to Section 603 (b) of the Public Employe Relations Act, order and Election and certify the name of the employe representative designated for purposes of collective bargaining by a majority of the employes in a appropriate unit.

_____	_____
(Public employer)	(Employe representative)
By _____	By _____
Title _____	Title _____

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

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Editor's Note: Petition to board by employe organization for election.

PERA 603(c)-4 (10-70)

COMMONWEALTH OF PENNSYLVANIA
The Pennsylvania Labor Relations Board

Petition for Representation by Public Employes, Group of Public Employes or Employe Organization

IN THE MATTER OF THE EMPLOYES OF

DO NOT WRITE IN THIS SPACE
Case No.
Date Filed
ABOVE IS FOR PLRB USE ONLY

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

The Petition of (public employes, group of employes, or employe organization) respectfully sets forth:

1. That the employe representative is (state name, address, zip code, telephone number and affiliation, if any)

2. That the public employer is (state name, address, zip code, telephone number)

3. That Petitioner notified the public employer pursuant to Section 603(a) of the Public Employe Relations Act on (date of receipt) and requested the public employer to join in a Petition for Election and public employer refused said request on -- or failed to reply (strike out one not applicable) , copy of notification attached hereto.

4. That the unit deemed appropriate for purposes of collective bargaining is the employer unit or a subdivision of the employer unit (strike out one not applicable) comprised of the following classification of employes:

Classification	Nature of Work	Where Employed	Number of Employes

5. The identifiable community of interest of the employes comprising the proposed unit is (state factual grounds such as similarity of duties and working conditions, prior collective bargaining history, extent of organization, etc.)

6. That there are no other employe organizations claiming to represent any of the employes in the proposed bargaining unit except (state name, address, zip code, telephone number, or write NONE)

7. That Petitioner alleges that 30% or more of the employes in the designated unit desire to be exclusively represented for collective bargaining purposes by Petitioner, determined by (method used)

8. The proposed unit does or does not (strike out one not applicable) contain both professionals and non-professionals as defined by Section 301(7) of the Public Employe Relations Act, does or does not (strike out one not applicable) contain guards or other personnel treated at Section 604(3) of the Public Employe Relations Act, and does not contain any employes at the first level of supervision.

9. The budget submission date for the public employer is _____

10. Other relevant facts _____

WHEREFORE, Petitioner respectfully prays that the Pennsylvania Labor Relations Board pursuant to Section 603(c) of the Public Employe Relations Act, send a copy of this Petition to the public employer and provide for an appropriate hearing upon due notice, and approve the proposed unit and issue an order for an election and certify the name of the employe representative designated for purposes of collective bargaining by a majority of the employes in an appropriate unit.

By _____

Title _____

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

★ ★ ★

PERA 603(d)-5 (10-70)

COMMONWEALTH OF PENNSYLVANIA
The Pennsylvania Labor Relations Board

Petition for Election by Public Employer

IN THE MATTER OF THE EMPLOYES OF

DO NOT WRITE IN THIS SPACE
Case No.
Date Filed
ABOVE IS FOR PLRB USE ONLY

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

1. That the Public Employer is (state name, address, zip code, telephone number)

2. That the public employer has received from (public employe, group of public employes or employe organization) on (date received) notification and request for consent election containing basis of determination of 30% interest, pursuant to Section 603(a) of the Public Employe Relations Act and consented thereto on _____ and that the party giving said notice did not thereafter seek an election. (copy of notification attached hereto).

3. That the employe representative giving notice is (state name, address, zip code and telephone number)

4. That the unit deemed appropriate for purposes of collective bargaining is the employer unit or a subdivision of the employer unit (strike out one not applicable) comprised of the following classification of employes:

Classification	Nature of Work	Where Employed	Number of Employes

5. The identifiable community of interest of the employes comprising the proposed unit is (state factual grounds such as similarity of duties and working conditions, prior collective bargaining history, extent of organization, etc.)

6. That there are no other employe representatives claiming to represent any of the employes in the proposed bargaining units except (state name, address, zip code, telephone number, or write NONE)

7. The proposed unit does or does not (strike out one not applicable) contain both professionals and non-professionals as defined by Section 301(7) of the Public Employe Relations Act, and does or does not (strike out one not applicable) contain guards or other personnel treated at Section 604(3) of the Public Employe Relations Act, and does not contain any employes at the first level of superivision.

8. The budget submission date for the public employer is _____

9. Other relevant facts _____

WHEREFORE, Petitioner respectfully prays that the Pennsylvania Labor Relations Board, pursuant to Section 603(d) of the Public Employe Relations Act, send a copy of this Petition to the party giving the Section 603(a) notification and provide for an appropriate hearing upon due notice, and approve the proposed unit and issue an order for an election and certify the name of the employe representative designated for purposes of collective bargaining by a majority of the employes in an appropriate unit.

By _____

Title _____

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

PERA 1201-9 (10-70)

COMMONWEALTH OF PENNSYLVANIA
The Pennsylvania Labor Relations Board

Charge of Unfair Practices Under Article XII

PENNSYLVANIA LABOR RELATIONS BOARD

vs.

DO NOT WRITE IN THIS SPACE
Case No.
Date Filed
ABOVE IS FOR PLRB USE ONLY

TO THE HONORABLE, THE MEMBERS OF THE PENNSYLVANIA LABOR RELATIONS BOARD:

The Complainant, (name of public employe, employe organization or public employer, address, zip code, telephone number) by and through (name of person filing charge) its title ,

HEREBY CHARGES

that (name of person alleged to have committed unfair practices) of (address, zip code, telephone number) a public employe, employe organization or public employer)

(If more than one Respondent, place X in block ☐ and list on separate sheet) has engaged in unfair practices contrary to the provisions of the Public Employe Relations Act, and more particularly Section 1201, subsection (a) or (b), clause(s) (1), (2), (3), (4), (5), (6), (7), (8), (9), thereof (cross out subsection and clauses inapplicable).

SPECIFICATION OF CHARGES

Specific facts, events, dates and grounds in support of such charges are as follows: (Include names, addresses and zip codes of any discharged employes involved, if applicable.)

WHEREFORE, The Complainant respectfully requests the Pennsylvania Labor Relations Board to enter the charge upon the Docket of the said Board and to issue and cause to be served upon the Respondent above named a Complaint stating the charges of Unfair Practices and containing a Notice of Hearing.

_____
(Complainant)

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ss

On this day of _____ , 19__ before me, a _____ , in and for said County and State, personally appeared_____ , who being duly sworn according to law, deposes and says that he is the person filing the foregoing CHARGE OF UNFAIR PRACTICES and that he is aware of the contents thereof and that the matters and facts set forth therein are true and correct to the best of his knowledge, information and belief.

_____
(Signature of Affiant)

SWORN AND SUBSCRIBED TO before me the day and year first aforesaid.

(INCOMPLETE OR INACCURATE STATEMENTS HEREON MAY RESULT IN A DISMISSAL OF THIS PETITION)

Editor's Note: Example of an Election Ballot.

COMMONWEALTH OF PENNSYLVANIA
The Pennsylvania Labor Relations Boards

OFFICIAL BALLOT

IN THE MATTER OF THE EMPLOYES OF

Case No. PERA-R-391-W

WESTMORELAND COUNTY

I. Unit Determination Election : -
Mark One Square Only

I understand that the requested unit includes both professional and non-professional employes and I hereby indicate my preference as to the inclusion of professional employes as follows:

I DESIRE TO BE INCLUDED IN A UNIT OF PROFESSIONAL AND NON-PROFESSIONAL EMPLOYES ☐

I DO NOT DESIRE TO BE INCLUDED IN A UNIT OF PROFESSIONAL AND NON-PROFESSIONAL EMPLOYES ☐

II. Collective Bargaining Representative Election : -
Election

To ascertain the exclusive representative for the purpose of collective bargaining in respect to wages, hours and terms and conditions of employment of all the employes of

WESTMORELAND COUNTY

in a subdivision of the employer unit comprised of nursing service, non-nursing service, clerk-typist, stenographers, technical, maintenance and trades and custodial, excluding Recorder of Deeds, Register of Wills, Comptrollers, Sheriff, Prothonotary, Clerk of Courts, Coroner, County Treasurer, District Attorney and Jury Commissioners, excluding, further, from said unit, all Management Level Employes, Supervisors, First Level Supervisors, Confidential employes, and Guards as defined in the Act.

MARK ONE SQUARE ONLY
Place cross (X) mark in the square of your choice

SERVICE EMPLOYES INTERNATIONAL UNION, AFL-CIO	NO REPRESENTATIVE
☐	☐

DO NOT SIGN YOUR NAME – THIS IS A SECRET BALLOT
FOLD YOUR BALLOT AND DEPOSIT IN BALLOT BOX
IF YOU SPOIL YOUR BALLOT RETURN IT AND OBTAIN A NEW ONE

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Chapter V

What existed before Act 195

The 1947 no-strike law

Prior to the passage of Act 195, public employers and public employes were governed by the 1947 No-Strike Law, which prohibited strikes by public employes and effectively ruled out binding collective bargaining by public employes and their employers. Since, under this law, there could not be a recognized bargaining agent, there was no way to apply penalties or forfeitures to employe organizations under this law. All penalties for violation of the 1947 law were applied to employes. Because of this, and because of the significance of some of the penalties assigned under the law, the courts generally refused to uphold the provisions of the law. Thus, the 1947 No-Strike Law became unenforceable. It is repeated here:

No. 492
AN ACT

Relating to strikes by public employes; prohibiting such strikes; providing that such employes by striking terminate their employment; providing for reinstatement under certain conditions; providing for a grievance procedure; and providing for hearings before civil service and tenure authorities, and in certain cases before the Pennsylvania Labor Relations Board.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. As used in this act —

(a) The term "public employe" includes all persons holding a position by appointment or employment in the government of the Commonwealth

of Pennsylvania, or under any of its agencies, boards, commissions or other branches, or in the government of any political subdivision of the Commonwealth, or any authority, or in the public school system.

(b) The word "strike" means the failure to report for duty, the wilful absence from one's position, the stoppage of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions of compensation or the rights, privileges or obligations of employment: Provided, however, That nothing contained in this act shall be construed to limit, impair or affect the right of any public employe to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment, or the betterment thereof, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment; nor to limit, impair or affect the right of any such employe to attend meetings, conferences or hearings, relating to such matters, so long as such attendance is not designed to interfere with the full, faithful and proper performance of the duties of employment for the further purpose of equitably carrying out the provisions of this act. In order to avoid or minimize any possible controversies by making available full and adequate governmental facilities for the adjustment of grievances, the governmental agency involved, at the request of the public employes, shall set up a panel of three members, one to be selected by the employes, one by the governmental agency, and the two so selected to select a third member. The members of the panel shall be compensated for all necessary expenses by the Commonwealth, *or the political subdivision thereof, or the authority involved. The panel shall meet within fifteen (15) days. If the grievance can be adjusted through negotiation and informal conferences between the various parties, it shall be so adjusted. If the conference negotiations do not result in rulings satisfactory to all parties concerned, the panel shall afford the public employes and the governmental agency a full hearing after which the panel shall make their findings, a copy of which shall be sent to the Governor, to the General Assembly, and to the head of the agency, or political subdivision involved.

Upon receipt of the findings of the panel the Governor or the head of the State agency or political subdivision involved may take administrative measures to remedy the complaints. If the Governor or the head of the State agency or political subdivision finds that the situation complained of can only be remedied by legislative action, the Governor may refer the matter to the Legislature for correction, or the head of the State agency or political subdivision may refer the matter to the proper law-making body. If the members of the panel decide that legal counsel is necessary they may, with the approval of the Attorney General, engage local counsel to advise them on the questions involved: Provided, however, That in the

*"on," in original.

case of grievances or controversies involving employes of the public school system of the Commonwealth, the school board or Board of Public Education, at the request of the employes, shall set up a panel of three members, one an employe of the school district to be selected by the employes, one a member of the board of school directors or Board of Public Education to be selected by such body, and the third shall be the State Superintendent of Public Instruction, or his nominee. The members of the panel shall serve without compensation, but shall be paid by the school district or Board of Public Education involved.

Section 2. No public employe shall strike, and no person exercising any authority, supervision or direction over any public employe shall have the power to authorize, approve or consent to a strike by one or more public employes.

Section 3. Notwithstanding any other provision of law, any public employe who violates the provisions of this act shall thereby abandon and terminate his appointment or employment and shall no longer hold such job or position, or be entitled to any of the rights or emoluments thereof, except if appointed, reappointed, employed or re-employed as hereinafter provided.

Section 4. Notwithstanding any other provision of law, a person violating the provisions of this act may, subsequent to such violation be appointed or reappointed, employed or re-employed as a public employe but only upon the following conditions:

(a) His compensation shall in no event exceed that received by him immediately prior to the time of such violation.

(b) The compensation of such person shall not be increased until after the expiration of three years from such appointment or reappointment, employment or re-employment, and

(c) Such person shall be on probation for a period of five years following such appointment or reappointment, employment or re-employment, during which period he shall serve without tenure and at the pleasure of the appointing officer or body.

Section 5. Notwithstanding the provisions of any other law, any person holding such a position who, without the lawful approval of his superior, fails to report for duty or otherwise absents himself from his position or abstains, in whole or in part, from the full, faithful and proper performance of his position shall be deemed on strike: Provided, That such person, upon request, shall be entitled to establish that he did not violate the provisions of this act. Such request must be filed in writing within ten days after regular compensation of such employe has ceased. In the case of a public employe who is entitled by law to a hearing upon dismissal or removal, such written request shall be filed with the officer or body having power to remove such employe, and such officer or body shall within ten days conduct a hearing to determine whether the provisions of this act have been violated by such public employe in the manner provided by law, appropriate to a proceeding to dismiss or remove such public employe. In the case of a public employe who is not entitled by law to a

hearing upon dismissal or removal, such written request shall be filed with the officer or body having power to remove such employe, and such officer or body having power to remove such employe, and such officer or body shall within ten days conduct a hearing to determine whether the provisions of this act have been violated by such public employe in the manner provided by law, appropriate to a proceeding to dismiss or remove such public employe. In the case of a public employe who is not entitled by law to a hearing upon dismissal or removal, the request for a hearing shall be filed with the Pennsylvania Labor Relations Board which shall, within ten days, conduct a hearing to determine whether the provisions of this act have been violated by such public employ in the manner provided for hearings before the board by the Pennsylvania Labor Relations Act. All such proceedings shal be undertaken without unnecessary delay.

Approved — The 30th day of June, A.D.1947.

JAMES H. DUFF

THE HICKMAN COMMISSION

Early in 1968, then governor, Raymond Shafer established a commission to review the matter of public employe collective bargaining and to make recommendations regarding changes to the 1947 No-Strike Law. This commission was made up of:

Governor's Commission To Revise
The Public Employe Law Of Pennsylvania

Leon E. Hickman, Chairman	Edward B. Mifflin
Harold F. Alderfer	N.R.H. Moor
P. Freeman Hankins	Emil E. Narick
John W. Ingram	Max Rosenn
Bernard N. Katz	William G. Willis
Robert H. Kleeb	John K. Tabor

Ultimately, this commission was to be known as the Hickman Commission, taking the name of its chairman who was a well-known labor relations executive in his role as labor attorney and labor relations vice president for Alcoa.

The Hickman Commission conducted extensive public hearings in formulating its recommendation which would ultimately produce a new law — eventually, Act 195. PSBA presented testimony to that commission as follows:

Statement of the Pennsylvania School Boards Association
Submitted to the Governor's Commission
For the Revision of Pennsylvania's Public Employe Law
May 22, 1968
Harrisburg, Pennsylvania

I am Fred M. Heddinger, president of the Pennsylvania School Boards Association and president of Pennsylvania Electronics Technology, Inc. a small basic manufacturer of electronic components. With me today are Frank J. Young, second vice president of the association and John J. Hertz, its executive director.

On behalf of PSBA and the 741 (now 505) local school districts it represents, including the school administrators who serve as agents and administrative executives of these local school boards, I wish to express our appreciation to the members of this commission for the opportunity to appear before you today to present views and suggestions regarding possible revisions of the Pennsylvania Public Employe Law.

Let me begin by pointing out that the personal backgrounds of both Mr. Young and myself include considerable union and nonunion experience as well as supervisory and management experience in the private sector. Therefore, these comments bring the insight of this kind of

experience along with the perspective and experience of school boards and school administrators throughout the state.

Because we have become increasingly aware of changing attitudes in the public sector of employment and most especially in the field of education, we appear before this commission in the spirit of cooperation in revising Pennsylvania's public employe laws **if such revision can be accomplished in such a manner as to adequately protect the public whom we serve and at the same time properly protect and accommodate the body of public employes whom we also serve.** To this end, we offer the resources of our association to work cooperatively with the commission.

We should point out that we concur with the provisions of current Pennsylvania law which forbids strikes by public employes. However, there is today a body of opinion which suggests that — based on recent experience, including the recent teacher's strike in Pittsburgh — the anti-strike provisions of the present public employe law are not enforceable, primarily because of the severe penalties associated with violation of the law. In suggesting changes to the existing law, however, we remind the members of the commission that any changes must protect the public from the sheer economic and political power of individual and collective public employe groups while at the same time protecting public employe groups from possible arbitrary and unilateral actions of public employers. Any changes to the present law must satisfy both of these conditions, and must carefully achieve an appropriate balance between these two interests.

Bearing in mind that we do not believe that public employes have the right to strike, we do, however, believe that public employes have the right to be represented by people of their own choosing and may elect to bargain collectively on subjects relating to wages and hours and conditions of employment. If strikes by public employes are to be forbidden (we believe that such strikes must be prohibited and that public employes forego such instruments when they accept public employment), then an effective and satisfactory substitute for strikes must be found which will ensure public employes full and impartial resolution of grievances between public employes and public employers.

With these introductory remarks as an underlying base, let me suggest some areas for principal attention in considering revisions to the present public employe law.

1. Collective Bargaining for public employes should be made possible. Where present laws are either silent or prevent collective bargaining, we believe that changes should be made to **clearly permit** collective bargaining and to provide some ground rules for such bargaining if the employes choose to seek representation through collective bargaining.

2. We believe that the rights of individuals and minority organizations must be protected, especially in the field of education, so that individuals may elect to join, or not to join,

organizations representing employe groups without fear of coercion or intimidation by either the employe organization or the employing body.

3. If employes elect to bargain collectively we believe that it is in the interest of the employe and the public employer that the representative selected by the employe group to bargain for it should be selected by secret ballot in an election properly supervised by an impartial State board or agency.

4. The matter of who shall be included in a bargaining unit, and whether all public employes shall be included under the cognizance of a single body or board, is a matter to be most carefully and deliberately considered.

First, we strongly believe that professional, supervisory, and so-called management personnel **must be excluded** from bargaining units of public employes. Because there are wide differences between public employment and employment in the private sector, we would urge that **separate guidelines** be developed which define professional supervisory, and management personnel in the public sector. Doctors, nurses, lawyers, psychologists, and psychiatrists are examples of professional personnel who should be excluded from bargaining units.

Second, wide differences exist between employes engaged in the field of education and those engaged in other fields of public employment. For example, legislated salary schedules and fringe benefits are the rule in education whereas they are much less likely in other fields of public employment. Prescribed educational prerequisites are generally spelled out for teachers and others in education whereas this is generally not the case in other fields of public employment. **A cursory review of the Public School Code reveals some 16 or 17 provisions now established by law which would likely be contract provisions of collective bargaining in the private sector.** Most of these provisions apply only to teachers and not to other public employes.

In view of these differences, we believe that careful fact-finding, and consideration of these facts, should be undertaken by this commission in reviewing the experience of other states that now have collective bargaining procedures for public employes before any decision is reached as to how collective bargaining will be administered for public employes in Pennsylvania.

5. If there is to be collective bargaining for public employes, then, in the case of school employes, such matters as tenure, state mandated salary programs, sabbatical leave, sick leave, retirement programs, and similar fringe benefits should properly be made subjects of the bargaining process.

6. If the general public welfare is to be protected against strikes by groups of public employes, then some other medium must be found to resolve grievances and impasses. It is recommended that provisions be made for a fact-finding commission that would be impartial in its makeup but would draw upon pertinent experience in other fields.

Further, it is recommended that issues arising from the language or general framework of a contract or agreement resulting from the collective bargaining process be resolved by the courts or an arbitration panel. **We believe that arbitration should be limited to only disagreement as to the terms of a contract or agreement already reached by public employe group and public employer.**

7. In order to protect the public and public employes from the coercive and intimidating effects of jurisdictional disputes between employe organizations, **it is recommended that appropriate penalties be provided for organizations which use unlawful intimidating tactics** in pursuing their organizational objectives. Further, **it is recommended that employes be safeguarded against membership dues checkoff and maintenance of membership in any organization.**

Recent legislation enacted by several other states covers, in some instances, school employes separately and, in others, collectively with other public employes. At this time, we are not in a position to adequately evaluate the relative merits of either approach for application to Pennsylvania. We do urge, however, that the commission carefully study the problem and evaluate the respective advantages of each approach, and compare other aspects of pertinent Pennsylvania law with similar features of other state law in those states where collective bargaining laws for public employes have been enacted.

The Pennsylvania School Boards Association is studying various pertinent laws from other states and wishes to point out to the commission that it will be pleased to make its further findings and recommendations available to the commission as soon as it is possible to do so.

Gentlemen, once again let me express for Pennsylvania school boards and school administrators our appreciation for the opportunity to present these views and suggestions. Also, let me again offer the assistance and resources of the Pennsylvania School Boards Association in helping the commission discharge the task to which it has been assigned. I shall be pleased to answer any questions that you may have.

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Following the presentation of the Hickman Commission report, there were divergent views on what form a new law should take which would

replace the 1947 No-Strike Law. The AFL/CIO and the Pennsylvania State Education Asociation joined forces for the first time and produced HB 1443 which came dangerously close to becoming the law which would have replaced the 1947 No-Strike Law. PSBA had produced SB 518 which embraced the principles that had been set forth for such a new law and which closely paralleled the Hickman Commission recommendation. HB 1443 would have been a travesty had it been enacted, and Leon Hickman forthrightly said so.

Proposed legislation compared

By early summer of 1970, it became apparent that certain compromises would have to be accepted all around if a bargaining law was to be enacted. SB 1333 (which ultimately became Act 195) had been introduced on March 17, 1970. A comparison of HB 1443, SB 518, and the Hickman Commission proposal had been prepared by PSBA, and was used as a benchmark for evaluating features of SB 1333.

As can be seen from the following comparison, SB 1333, which became Act 195, was quite a contrast to HB 1443. HB 1443 was passed by the House, but never got out of committee in the Senate.

Comparison of Proposed
Public Employe Legislation
PSBA – Hickman – AFL-CIO, PSEA

pages 176-183

PROPOSED PUBLIC EMPLOYE LEGISLATION . . . A COMPARISON

*PSBA – S.B. 518	**HICKMAN – S.B. 1021	***AFL-CIO, PSEA – H.B. 1443
1. Public Employer		
State, political subdivisions, school districts.	State, political subdivisions, school districts.	State, political subdivisions, school districts plus any person or agency engaged, directly or indirectly, in any proprietary or non-profit, public or private, scientific, literary, educational, charitable, health, welfare, recreational or religious activity, or whose facilities are utilized for such purposes, and any person acting directly, with or without its or his knowledge, in the interest of a public employe.
2. Public Employes with Right to Organize		
Individual employed by public employer – not elected officials, appointees by Governor with consent of Senate, supervisors or confidential employes.	Individual employed by public employer – not elected officials, appointees by Governor with consent of Senate, supervisors or confidential employes.	All persons employed by public employer except elected officials, appointees of Governor with consent of Senate and supervisors.

3. Policemen and Firemen		
Act III of 1968 repealed. Treated as others except they must form separate units.	Must form separate units.	Not covered since bill specifically keeps Act III of 1968 in effect and excludes firemen and policemen from the definition of public employes.
4. Public Employe Rights		
Organize and join union, engage in lawful concerted activities, bargain collectively. However, the right to engage in concerted activities is not stated.	Organize and join union, engage in lawful concerted activities, bargain collectively.	Organize and join unions, bargain collectively, engage in concerted activities.
5. Right to Refrain		
Employes can refrain from joining or participating.	Employes can refrain from joining or participating.	Labor organization can bargain with employer to require, as a condition of employment, membership in the union or agency shop.
6. Dues Checkoff		
No mention.	Bargainable but members must give written consent. There can be agency shop but once again employe must give written consent before employer deducts dues.	Employer can deduct only if majority of bargaining unit agrees and then only after receiving written authorization from each employe.

* Pennsylvania School Boards Association proposal
** Legislation drafted to implement the Hickman Commission Report
*** AFL-CIO and Pennsylvania State Education Association proposed legislation

PSBA – S.B. 518	HICKMAN – S.B. 1021	AFL-CIO, PSEA – H.B. 1443
7. Scope of Bargaining		
(a) Meet and confer in good faith with respect to wages, hours, or other terms and conditions of employment.	(a) Meet and confer in good faith with respect to wages, hours, or other terms and conditions of employment.	Wages, hours, salaries and other terms and conditions of employment.
(b) Not required to bargain if resolution would violate State law or municipal home rule charter or change civil service statutes.	(b) Not required to bargain if resolution would require statutory enactment by legislature or amendment of municipal home rule charter; violate state law or municipal home rule charter or change civil service laws, ordinances, rules or regulations.	
8. Management Rights		
Employers not required to bargain over matters of inherent managerial policy such as functions, programs, efficiency and standards of service, budget, selection, tenure, direction of personnel, the technology of work performance.	Employers not required to bargain over matters of inherent managerial policy such as functions, programs, efficiency and standards of service, budget, selection, tenure, direction of personnel, the technology of work performance unless parties have included any such items in the scope of their collective bargaining during 3 year period prior to 7/1/68.	Not mentioned.
9. Selection of Representatives		
Election required except for existing representatives.	Election required except for representative existing on 7/1/68.	Board determines at hearing or holds secret ballot if either party requests. Existing exclusive representative recognized.

10. Duration of Certification		
Cannot be challenged until 180 days before second succeeding "budget submission date."	Cannot be challenged until 180 days before second succeeding "budget submission date."	One year, or longer, if contract so provides.
11. Appropriate Unit		
(a) Board determines.	(a) Board determines.	(a) Board determines if majority of members of craft want craft unit. Board must designate craft unit.
(b) Professionals and non-professionals cannot mix.	(b) Unit not to include professionals and nonprofessionals unless majority of professionals approve.	(b) No mixing of professional and non-professional employes. School employes otherwise, professionals and non-professionals can be in same unit.
(c) Policemen, firemen or guards not mixed with other employes.	(c) Policemen, firemen or guards not mixed with other employes.	(c) Policemen and firemen excluded.
(d) Confidential employes excluded.	(d) Confidential employes excluded.	(d) No mention of confidential employes.
(e) Supervisory employes excluded.	(e) Supervisory employes excluded.	(e) Supervisory employes can organize own units. They may also be in unit with other public employes if majority of such employes in unit vote to include them.

PSBA – S.B. 518	HICKMAN – S.B. 1021	AFL-CIO, PSEA – H.B. 1443
12. Board		
Creates Pennsylvania Public Employes Relation Board – 3 members; chairman paid $25,000 plus expenses; others paid $100 per day plus expenses; 6-year terms.	Uses existing Pennsylvania Labor Relations Board. Three members, Chairman paid $8,250, others $7,700.	Uses existing Pennsylvania Labor Relations Board but changes name to Pennsylvania Employment Relations Board. Three members, Chairman paid $8,250; others $7,700.
13. Impasse Procedures		
(a) Negotiations must begin at least 200 days prior to budget submission date and continue with or without voluntary mediation up to 110 days prior to budget submission date.	(a) Negotiations and/or voluntary mediation up to 90 days prior to budget submission date.	(a) Employes only can request collective bargaining at any time. Employer never can.
(b) Compulsory mediation begins 110 days prior to budget submission date.	(b) Compulsory mediation continues to 70 days prior to budget submission date.	(b) After 15 days of the commencement of collective bargaining, either party can request mediation by the Department of Labor and Industry.
(c) Fact-finding begins 80 days prior to budget submission date.	(c) Fact-finding begins 70 days prior to budget submission date.	(c) 20 days after mediation has begun either party can declare that an impasse has occurred. Several procedures can now be followed.
(d) Fact-finder reports to parties 55 days prior to budget submission date.	(d) Fact-finding report – 30 days prior to budget submission date.	(d) Either party can request fact-finding by the American Arbitration Association, which report is due within 35 days.

(e) Parties notify PERB whether they accept report 45 days prior to budget submission date. Report made public if not accepted.	(e) Parties notify PERB whether they accept report 20 days prior to budget submission date. Report made public if not accepted.	(e) None.
	(f) Second report on acceptance by parties 7 days prior to budget submission date.	
(g) Arbitration starts 45 days prior to budget submission date.	(g) Compulsory arbitration for firemen, policemen, prison guards, mental hospital guards after mediation (70 days prior to budget submission date). Voluntary arbitration for others at any time during impasse.	(g) Regardless of whether fact-finding has been requested, both parties may agree to submit to binding arbitration. Agreement to arbitration must be ratified by public employes branch, authority or board authorized to appropriate the funds of the public employer.
(h) Arbitration reports – 15 days prior to budget submission date.	(h) No date for arbitration report.	
14. Arbitration Findings		
Final and binding on both parties. A mandate if legislation required to implement determination concerning policemen and firemen. Otherwise, advisory if legislation required.	Final and binding on firemen and policemen. Final and binding on prison guards and mental hospital guards except when legislation required, then it is advisory. If others submit to voluntary binding arbitration, decisions still only advisory if legislation required.	Final and binding on both parties.

PSBA – S.B. 518	HICKMAN – S.B. 1021	AFL-CIO, PSEA – H.B. 1443
15. Right to Strike		
(a) None.	(a) Firemen, policemen, prison guards and mental hospital guards are prohibited from striking. Other public employes cannot strike during negotiation, mediation or at fact-finding, which means no strike until 7 days prior to budget submission date.	(a) Anytime after impasse, unless parties are in arbitration. Must be 15 days notice. Strike could occur any time during contract period depending on when negotiations were requested by the employe organization.
(b) None.	(b) Strike can be curtailed if it endangers public safety, health or welfare.	(b) Strike can be curtailed by injunction only when it presents a clear and immediate danger to public health and safety (not welfare or convenience), but if 20% of the work force continues working it shall be presumed that no such danger exists. If court determines such danger still exists it can order work up to 35% of the work force providing the vital service.
16. 1947 Public Employe Anti-Strike Act		
Repealed	Repealed and public employer has right to grant amnesty.	Repealed. Amnesty granted to any person affected.

17. Penalties for Illegal Strike

1. Employes.	1. Employes.	1. Employes – fine in amount court shall determine, but not exceeding $200 per day.
(a) Loss of pay and other benefits while on strike.	(a) Loss of pay and other benefits while on strike.	
(b) Subject to supervision, demotion or discharge at discretion of public employer.	(b) Subject to supervision, demotion, or discharge at discretion of public employer.	
(c) If refusal to obey court order $500 fine or 30 days in jail, or both.	(c) If refusal to obey court order, $500 fine or 30 days in jail, or both.	
2. Organization.	2. Organization.	2. Organization – fine in amount court shall determine, but not exceeding $2000 per day.
(a) Decertification of discretion of board, but no renewal up to two years.	(a) Decertification of discretion of board – no renewal for up to one year.	
(b) Fine of $5 per member per day.	(b) Fine of $10,000 per day.	

What led to Act 195

During the discussion that preceded Act 195, and shortly after its enactment, a great deal of speculating and assessing was taking place. One such review was presented by Albert F. Unger, director of PSBA legislative services, at Saint Francis College on October 9, 1970. It follows.

School boards and collective bargaining

By Albert F. Unger

Under the American form of federalism, the people reside in and are citizens of not only the United States but also the state in which they dwell. The powers of government have been distributed by the Constitution between the national and state governments. The 10th Amendment to our Constitution reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Since the Constitution does not delegate to the nation general authority over the field of education, its supervision and control is reserved to the states.

The basic law governing the provision for, and operation of, schools is contained in the Constitution of the Commonwealth of Pennsylvania (1968), Article 3 Section 14.

Over the years the Pennsylvania General Assembly has seen fit to make certain revisions in the school laws of Pennsylvania in order to keep pace with the changing times.

The opinions of the Pennsylvania Department of Justice, together with court rulings, have served from time to time to clarify legislative enactments and constitutional provisions relative to school matters. Portions of Pennsylvania School Laws are mandatory; others are permissive. Some are positive in character; others, negative. In still other instances, the law is silent on many problems faced by a local board of education. Accepted practice often outruns written legal provisions.

Up to this time collective bargaining has been prohibited in the schools of Pennsylvania. The Act of June 30, 1947 (P.L. 1183), "The Public Employes Anti-Strike Act," provided for grievance panels to serve as a public sounding board for employe complaints when an impasse was reached in local discussions. However, no formal collective bargaining was permitted under law. Collective bargaining has come on the scene in the public sector rather recently, spanning perhaps 10 years.

"Without fear of penalty"

President Kennedy issued an executive order in 1962 which stated: "Employes of the federal government shall have and shall be protected in the exercise of the right — freely and without fear of penalty or reprisals — to form, join in and assist any employe organization or to refrain from such activity." This order went a long way to establish a precedent which was going to have the effect of instituting collective bargaining laws in some 28 states. In the absence of such a law in Pennsylvania, which would allow the school districts to recognize an exclusive bargaining agent or to bargain collectively, employe organizations attempted to stretch and mutilate the intent of the 1947 anti-strike act. As a result much court litigation ensued over that matter. The results of two significant court cases firmly established the school boards' responsibility.

One such case was decided in the Common Pleas Court of Philadelphia. The court ruled that the district transfer pact with teachers was invalid. The court stated: "The power vested in the school officials includes also the duty to constantly review and re-evaluate that policy. School officials must not be hampered or restrained at any time from acting in a contrary manner or from revising the stated policy when revision is dictated. The discharge of this function would be impeded by contractural agreements if we were to permit teacher assignments and transfers to be the subject of collective bargaining.

"It is our view that it is a violation of the educational supplement in the public policy of this state to permit the transfer and assignment of teachers to be the subject of collective bargaining and that the board abused its discretion in allowing the subject to be a part of the agreement."

Another such case was decided in the Court of Common Pleas of Erie County. The conclusions of the law as stated by that court were: "(1) In the absence of an act of the Legislature, exclusive collective bargaining between defendant union and the school district is illegal.

"(2) The school district may conduct nonbinding negotiations over teachers' salaries with plaintiff union, defendant union or both unions, or with any other interested parties."

Regardless of the clear prohibition against strikes as outlined in the "1947 Anti-Strike Act," the real overt acts of disregard for the law were evidenced by some 23 teacher strikes during the spring of 1969. In 1970 there were substantially fewer strikes.

Pitfalls explained to employes

It was obvious by 1965 that Pennsylvania would ultimately have a collective bargaining law for public employes. Generally, school boards did not want broad scale collective bargaining. They protested this device as being necessary in education or government. Time and time again the pitfalls of collective bargaining were pointed out as they would apply to the public sector and specifically, to professional employes. The constraints of collective bargaining would clearly limit the proper performance of a

professional. And, of course, the right of school boards to discharge their legal responsibilities would be challenged. The basic reason and need for government has been service for people, — needless to say, a worthy cause to defend.

It must be understood that the main push for a collective bargaining law in the commonwealth was made by employe organizations to serve their own vested interests. The American Federation of Teachers (AFT) long had as their platform the conviction of the basic right for employes to organize and to bargain collectively, as well as to strike. The rival Pennsylvania State Education Association (PSEA) has taken up that same theme, only more recently.

The first move on the part of PSEA was to seek the right to bargain collectively. It wasn't until 1968 that that association endorsed the right to strike for teacher oganizations. This past year, alone, 14 bills were introduced in the state Legislature calling for some form of public employe negotiations.

Prior to the passage of the present law (Act 195), three bills remained rather prominent for a continued period of time. They were HB 1443, the bill drafted jointly by the PSEA and the AFL-CIO; Senate Bill 1021 which in essence embodied all the features of the Hickman Commission Report; and Senate Bill 518, a bill introduced by the Pennsylvania School Boards Association.

Pennsylvania, fortunately, averted a disaster when employer groups in the summer of 1969 effectively blocked the passage of HB 1443. After it was evident that public employer groups throughout the state, spearheaded by the PSBA, would not knuckle under to the pressures of employe organizations, a new and basically well-constructed bill, SB 1333, came on the scene. Eventually to be passed as Act 195, SB 1333 was signed into law July 23, 1970, effective October 21, 1970.

With respect to public service institutions, this was probably the most important piece of legislation passed in 40 years, spanning the past 20 and covering the next 20 years.

Governor Raymond P. Shafer, when signing the collective bargaining law (Act 195) said, "I personally do not take this step without misgivings and strong reservations." He went on to say that a condition of government employment of government workers (including teachers) "should be a waiver of the right to strike because the health and safety of the public should never be an issue at the bargaining table." Here again we get a candid perspective of state government where principles are discarded in favor of "pressure politics" as exerted by special interest groups.

During the early fall of 1969 a statewide public opinion poll was conducted. The survey revealed the following facts:

- **Eighty-two percent of the state's residents favored revision of the present statutes.**
- **The right to strike is not considered wise in the public realm, largely on the basis of sacrifice of the public interest, health, safety and welfare.**

- **Sixty-one percent of Pennsylvania residents were against steacher strikes. This opinion was especially strong in the case of other public employes as well..**
- **Arbitration through a neutral third person was favored by 90 percent of those questioned as the best method for settling disputes.**
- **As to whether the decisions of the arbitrator should be binding or advisory, 62 percent favored the latter.**
- **Eighty-two percent of the respondents said arbitrator's decisions involving a tax increase should go into effect only after voter approval of the new levy.**
- **While those polled approved of the unions organizing public employes, they opposed including supervisors and those persons handling confidential material.**

The state's residents would also exclude employes of nonprofit organizations, such as churches, from any new public employe regulation on the subject. It is now obvious that the interests of the public played second fiddle to the interests of union lobbyists. A good many Pennsylvanians, including educators, are not yet aware of this simple fact.

It is interesting to note that the 17 fundamental principles supported by the Pennsylvania School Boards Association, and submitted in the form of Senate Bill 518, were by and large incorporated into the new law. Those 17 principles are enumerated as follows:

Fundamental principles incorporated into the new law

1. All public employes should be covered by the same law.

2. The employe must have the right to join, participate in, and support the organization chosen to represent him or to refrain from each and every one of these activities.

3. Bargaining units should include only those employes whose duties are nonsupervisory, nonadministrative or nonconfidential in nature.

4. Bargaining units should not include both professional and nonprofessional personnel.

5. A single organization should represent the unit on an exclusive basis.

6. A separate, independent agency should be created to administer the provisions of the law.

7. Choice of a representative organization should be by secret ballot election which allows each member of the unit full discretion.

8. The elected representative organization must have a minimum period during which its representative status cannot be challenged.

9. Terminal dates of contracts must be set as being coterminous with the fiscal year of the employer.

10. The scope of negotiable items must be defined and limited to exclude those items which are mandated by law to reside with the public employer.

11. Employers must be required to negotiate on petition of the representative organization.

12. An orderly procedure must be established setting a deadline for commencing negotiations with an impasse procedure outlined.

13. Impasse resolution procedures should first allow for the parties of interest to come to agreement with voluntary mediation. In cases where this is not successful, or if specified deadlines are not met, state level procedures should be invoked.

14. Impasse procedures should include mediation, fact-finding and compulsory arbitration with final authority on items requiring legislative action reserved to the employer.

15. Collective bargaining must culminate in a written agreement.

16. A grievance procedure must be mandated as part of any agreement with a definition of grievance limited to the interpretation or application of the agreement.

17. The rights of the general public to expect uninterrupted, mandated services must be protected through a prohibition against a strike by public employes.

Actually, only two provisions of the 17 principles stated failed to appear in the new law. One dealt with the impasse procedure in the new law allowing public employes to strike. The other was the failure of the law to provide a separate independent agency in order to adequately administer the provisions of the law. The latter may be forthcoming, by a separate piece of legislation, to form an independent agency to administer the law.

The Taylor law, now in its second year in New York State, has an independent Public Employe Relations Board to administer it. That independent board helped settle 635 disputes (66 in the last four months of 1968; 569 in 1969). It is impossible to envision the present Pennsylvania Labor Relations Board, as it's constituted, to in any way effectively administer Act 195. Interestingly, after the law was passed in New York, there was a 78 percent rise in the number of negotiation disputes in which school districts accounted for more than two-thirds of the conciliation activity.

Public and private schools employed 6 million in 1969

The real truth of the matter is that what has been enacted in Pennsylvania is not an education law, but a labor law. Yet, paradoxically, this enactment will have more effect on education than any other education law ever passed. By the National Education Association's (NEA) own statistics of 1969, they claim that six million full and part-time employes are engaged in public and private schools. Approximately five million are

engaged in the public sector, and one million in the private sector. Of these six million employes, 3.8 million are teachers, administrators and other professional personnel. The remaining employes are nonprofessional. This indicates that approximately one-third of the six million are nonprofessional employes.

What are the direct effects of the law on school boards in the commonwealth? First of all, from the above cited statistics, school boards will increasingly have to deal with nonprofessional as well as professional employes in the collective bargaining process.

Up to this time, approximately 25 percent of the school districts in Pennsylvania had some form of agreement. Now it will approach 100 percent of all the school districts in the state.

The law will cause a concise splitting of the professionals into a management-employe arrangement. This concept will not be easily digested by some professionals who still maintain, that regardless of their position in a school system, all professionals have the same community of interests.

Initially, the impact of this law may well drive out some good, dedicated school board members. Some see it as simply another tremendous burden in never-ending responsibilities, as well as further consummation of the school board members' time. Looking to the future, it is hoped that the trend will be reversed and well-informed, able school board members will come forth to bear the burden and the challenge that the new law offers.

Personnel directors will be needed

School boards will be required to get expert advice in this area. Along these lines there will undoubtedly be a new position created in almost all school systems, namely a "personnel director." The person in this position will serve as a buffer for both the school board and the superintendent in their relationship with employes. He would also carry such responsibilities as recruiting, recommending for hiring, indoctrinating employes, as well as follow-up activities. The personnel director already has his counterpart in industrial management. He should be a non-tenured employe as is the superintendent.

The law, although retaining the employers right to hire and to discharge employes for just cause consistent with existing legislation, will nevertheless make it more difficult for school boards to remove the unfit. Job security and seniority rights will be a primary thrust of employe organizations.

School Boards will face greater difficulty in preparing multimillion dollar budgets. The already burdensome problem of developing annual budgets will now be of greater significance. The unpredictability and time consuming process of collective bargaining will thwart early efforts to determine district allocations particularly in the area of instructional expense.

As a result of the increasing tax burden on the local citizens, the community will demand a greater accountability for teacher performance.

This dilemma, alone, places the board member in a most precarious position. He will have to appease the interests of the employes as well as the interests of the community.

School boards will no longer be able to stand alone. What happens in one school district of the commonwealth will greatly affect situations in other school districts. And remembering that this is a labor law, encompassing all public employes, what happens in one municipality or another will also have an effect on the school district arrangement. Public employers in general will have to draw together in a unified bond to offset the whipsawing effect among various employe organizations. Specifically, the new law will drive school boards into regional organizations to counteract local employe demands from one district to another.

Along the same lines, a strong statewide alliance of school board members will, of necessity, take place. Such an alliance will counteract what the NEA is seeking to build in developing political bargaining power for the nation's two million teachers by opening more than 1,000 new regional offices in the next two or three years. The NEA now operates 135 such offices.

Sam M. Lambert, (then) NEA executive secretary, recently stated: "With a full-time local staff, headed by a well-trained professional, local associations can begin to negotiate effectively with local boards to protect and defend teacher rights and to assist on upgrading education locally." The impact of all of this will require school boards to participate more than ever in the legislative process to prevent further manipulation of the School Code. There are 18 conditions of employment now mandated under Pennsylvania law for teachers. These conditions of employment would normally be a part of the collective bargaining process. The present law provides for the following:

Conditions of employment

1. A minimum salary of $6,000.

2. Thirteen step raises over a 13-year period so that the minimum salary of $9,600 will be reached at the end of this time.

3. A minimum hourly wage for part-time work.

4. An added minimum salary supplement for special education teachers.

5. Minimum salary for substitutes.

6. It guarantees payment of teachers' salaries when they are prevented from teaching because schools are closed by damage to schools or contagious disease.

7. Additional compensation for attending county-wide teacher institutes. This, however, will phase out as intermediate units come on the scene.

8. That a sabbatical leave be guaranteed to an employe after 10 years service and every seven years thereafter; salary entitlement is one-half salary for one year leave.

9. Ten days sick leave per year, cumulative from year to year with no limit on total, and with right of employe to carry a maximum of 25 days accumulated sick leave from one school district to another.

- *It also provides for a three [3] day paid leave of absence for a death in the immediate family, and*
- *A one (1) day leave for death of a near relative.*

10. A military leave of absence which preserves all rights and privileges of employes, including payment by school district of retirement benefits and advancement on steps of salary schedule just as if employe were at work. This military leave is not necessarily limited to active duty.

11. The present law provides for retirement benefits, recognized to be the best in the United States, including:

- *Retirement benefits are in addition to provisions of social security.*
- *Commonwealth payments to the retirement fund.*
- *Employer payments to the retirement fund.*
- *Employe payments to the retirement fund at a rate which is approximately one-third of the combined contributions of state, employer and employe.*
- *Employer payments and commonwealth payments into fund for employes who are on military leave.*

12. The law provides a mandated duty-free lunch period.

13. A minimum school year of 180 days of instruction and 20 days of actual teaching per school month. Use of Saturday as a day of school is prohibited.

14. It regulates the requirement for teacher preparation and permanent certification after three years of teaching.

15. It provides the job security of tenure after two years of teaching. Termination of employment is limited to: immorality, incompetency; intemperance, cruelty, persistent negligence, mental derangement, and persistent and wilful violation of the school laws of the commonwealth.

16. It limits suspension of employes to substantial decrease in pupil enrollment and reorganization of the school district or revision of the school district's curriculum (the latter requires approval by State Department of Education).

17. It also limits dismissal of employes to a formal public proceeding which operates as a court hearing and which may be appealed to both the State Department of Education and to the Court of Common Pleas.

18. Salary reductions or demotions may not, in general, be implemented without the employe's agreement which essentially guarantees, for the most part, that this cannot happen.

Along with a watchful eye on the developments of such new laws as they affect the School Code of Pennsylvania, careful attention must be given on the part of the board regarding court opinions that develop as an outgrowth of Act 195. Also the rules, regulations, and decisions developed and implemented by the Pennsylvania Labor Relations Board must be examined. There will be virtually no end to the kinds of rules, regulations, and court decisions that follow implementation of this act.

An example of the kind of rules presently being promulgated through the National Labor Relations Board, is a case where an employer who abolished the Thanksgiving turkey bonus because of employe union activities was guilty of unfair labor practice. Reason: The turkey had been given often enough in the past to be considered "an established condition of work."

What school boards will no longer be able to do is to philosophize on the unreasonableness of collective bargaining in the public schools. The task now will simply be to implement the collective bargaining law and to develop as positive a position as possible in order to carry out the main obligation of the school board to administer the school system. The board will have to use whatever power is necessary to perform that function, with the exception of those reserved by the state to itself. It behooves local authorities to thoroughly understand this new law in order to establish the proper, the equitable, and the most rational means of implementing it. Taking a positive approach, there are several strengths of Act 195 that may be cited from a school board point of view. [Strengths of Act 195 are reviewed in Chapter II, page 13.]

The name of the game

It should be obvious that collective bargaining was not the school board's "cup of tea." The movement for collective bargaining was developed and fostered by employe organizations. They will continue to take the initiative by the demands that they will make on school boards. A considerable body of experience has been built into the private sector of collective bargaining. But it will be a mistake to assume now that all practices in the private sector can be transferred to the public sector. As mentioned before in school business, it is the School Code that sets the precedent for what school boards may and may not do. Any agreement that is enacted must be in accordance with the school law of Pennsylvania.

To dramatize that point further, the Supreme Court of Pennsylvania decided recently in a case in Washington, Pennsylvania, between the city and the police department that the Third Class City Code takes precedence over any collective bargaining agreement. The arbitration panel, in that case, exceeded its authority when the city of Washington was ordered to pay insurance premiums on hospital insurance covering persons other than employes. That Supreme Court decision will become a benchmark case in public employe negotiations in Pennsylvania.

On the basis of developments in the last decade, one must face the facts. The name of the game in public service labor relations is collective bargaining. It is negotiation of wages and working conditions. It is a contract that details agreements reached in a negotiation. The school board's role in this process will be a continuous effort to provide the best possible education for the school children of its community. It is remarkable how school boards have worked under handicaps in the past. And it is certainly to their credit that Pennsylvania enjoys today's fine system of education.

When Act 195 became law

The July 24, 1970, issue of the PSBA *ILS*, the day following the signing into law of Act 195, carried the complete text of the new law. At that time PSBA said:

> Although the principal credit for SB 1333 must go to Senator Richard Frame and his State Government Committee in the Senate, PSBA played a key role in helping develop collective bargaining legislation for public employes.
>
> Early in 1968 PSBA sought the services of Dr. Wesley Wildman, nationally recognized authority on labor relations for public employment, and was instrumental in helping shape the recommendations of the Governor's Commission (generally called the Hickman Commission). Subsequently, PSBA sponsored SB 518 which received widespread support from statewide organizations except for the employe bargaining groups.
>
> PSBA is generally credited with having stopped HB 1443 which had been jointly drafted by the AFL-CIO and the PSEA, and which was "steamrollered" through the House in record order for such a piece of legislation. SB 1333 resembles SB 518 in many areas.
>
> After more than two years of study, discussion, and deliberation by the Legislature, the State Administration, and public employers and employes, SB 1333 has become the law which will govern working relationships between public employers and employes in the commonwealth.
>
> We have some reservations about portions of this new law. Through this law, Pennsylvania becomes the first mainland state to

legalize strikes by public employes — a dubious distinction that goes along with the dubious honor of being first to provide state aid to nonpublic schools. The latter distinction is due to be tested in the federal Supreme Court this fall.

But the time has passed for philosophical discussion about what should or should not be a part of a collective bargaining law for public employes and public employers. The die is cast and the task before us is to ensure that, insofar as education is concerned, unionizing of the classrooms comes about with the least possible adverse effect on the education of children — the only reason schools, teachers, and school boards exist.

Cool, deliberate action needed

This new law will have a profound effect on Pennsylvania education. Neither teachers, school administrators, nor school boards can yet fully comprehend the ultimate impact of the effects of this law. But until such time as reasonable guidelines develop through the cognizant agency — the Pennsylvania Labor Relations Board — and through the experience of trial and error while working under the law, we urge administrators, school boards, and teachers to cooperate with each other in allowing for an orderly development of these new working relationships by cool, deliberate action. Any attempt by either side to force an arrangement "under the gun" of expediency or extreme urgency, will in turn work to the ultimate disadvantage of both sides.

This reprint of SB 1333, in the form in which it was finally enacted into law, now becomes the framework under which school boards, school administrators, teachers and other employes must work together. However, note that sections 702, 703 and 704 are especially significant and probably contain the greatest wallop of this new law. Section 703 says, in effect, that any area of the School Code which has not been specifically repealed by this act still prevails. The interpretation and administration of this section in future months will be key as to what degree unionization of our classrooms will impinge on the learning experiences of children.

After more than five years of experience under the act, the truth of the July 24, 1970, statement — "This new law will have a profound effect on Pennsylvania education" — is well on its way to being demonstrated. Happily, almost all school districts have observed good stewardship in the bargaining agreements that they have reached under this new law. Hopefully, this will continue to be the pattern.

If for no other reason than the strike record that has developed under this law, changes in the law must surely be made. School officials need to keep in mind the lessons of the first five years experience, and to work cooperatively to bring about the kinds of changes that will bring about better balance in the application of this law to the public's interests.

Appendix

This appendix contains the text of Act 195 as enacted. Various points raised in the book may be checked against the language of the act. The upper case [capitalized] phrases are those portions of the act which were added, or amended, shortly before its enactment — they are shown to illustrate the sections still being debated at the time of enactment.

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1333 Session of 1970

Introduced By Frame, Lamb, Piasecki, Sesler, Reibman And Gerhart, March 17, 1970

As amended on second consideration, July 13, 1970

ACT 195

(As signed into law, July 23, 1970.)

Establishing rights in public employes to organize and bargain collectively through selected representatives; DEFINING PUBLIC EMPLOYES TO INCLUDE EMPLOYES OF NONPROFIT ORGANIZATIONS AND INSTITUTIONS; providing compulsory mediation and fact-finding, for collective bargaining impasses; providing arbitration for certain public employes for collective bargaining impasses; defining the scope of collective bargaining; establishing unfair employe and employer practices; prohibiting strikes for certain public employes; permitting strikes under limited conditions; providing penalties for violations; and establishing procedures for implementation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I
Public Policy

Section 101. The General Assembly of the Commonwealth of Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of

SENATE BILL 1333
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this act to promote orderly and constructive relationships between all public employers and their employes subject, however, to the paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare. Unresolved disputes between the public employer and its employes are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution. Within the limitations imposed upon the governmental processes by these rights of the public at large and recognizing that harmonious relationships are required between the public employer and its employes, the General Assembly has determined that the overall policy may best be accomplished by (1) granting to public employes the right to organize and choose freely their representatives; (2) requiring public employers to negotiate and bargain with employe organizations representing public employes and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the public employe, the public employer and the public at large.

ARTICLE II
Short Title

Section. 201. This act shall be known and may be cited as the "Public Employe Relations Act."

ARTICLE III
Definitions

Section 301. As used in this act:

(1) "Public employer" means the Commonwealth of Pennsylvania, its political subdivisions including school districts and any officer, board, commission, agency, authority, or other instrumentality thereof AND ANY NONPROFIT ORGANIZATION OR INSTITUTION AND ANY CHARITABLE, RELIGIOUS, SCIENTIFIC, LITERARY, RECREATIONAL, HEALTH, EDUCATIONAL OR WELFARE INSTITUTION RECEIVING GRANTS OR APPROPRIATIONS FROM LOCAL, STATE OR FEDERAL GOVERNMENTS but shall not include employers covered or presently subject to coverage under the act of June 1, 1937 (P. L. 1168), as amended, known as the "Pennsylvania Labor Relations Act," the act of July 5, 1935, Public Law 198, 74th Congress, as amended, known as the "National Labor Relations Act."

(2) "Public employe" or "employe" means any individual employed by a public employer but shall not include elected officials, appointees of the Governor with the advice and consent of the Senate as required by law, management level employes, confidential employes, CLERGYMEN OR

OTHER PERSONS IN A RELIGIOUS PROFESSION, EMPLOYES OR PERSONNEL AT CHURCH OFFICES OR FACILITIES WHEN UTILIZED PRIMARILY FOR RELIGIOUS PURPOSES AND those employes covered under the act of June 24, 1968 (Act No. 111), entitled "An act specifically authorizing collective bargaining between policemen and firemen and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of ARBITRATORS."

(3) "Employe organization" means an organization of any kind, or any agency or employe representation committee or plan in which membership includes public employes, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment, or conditions of work but shall not include any organization which practices discrimination in membership because of race, color, creed, national origin or political affiliation.

(4) "Representative" means any individuals acting for public employers or employes and shall include employe organizations.

(5), "Board" means the Pennsylvania Labor Relations Board.

(6) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to a substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

(7) "Professional employe" means any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time.

(8) "Unfair practice" means any practice prohibited by Article XII of this act.

(9) "Strike" means concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in

the conditions or compensation or the rights, privileges, or obligations of employment.

(10) "Person" includes an individual, public employer, public employe, authority, commission, legal representative, labor organization, employe organization, profit or nonprofit corporation, trustee, board or association.

(11) "Membership dues deduction" means the practice of a public employer to deduct from the wages of a public employe, with his written consent, an amount for the payment of his membership dues in an employe organization, which deduction is transmitted by the public employer to the employe organization.

(12) "Budget submission date" means the date by which under the law or practice a public employer's proposed budget, or budget containing proposed expenditures applicable to such public employer is submitted to the Legislature or other similar body for final action. For the purposes of this act, the budget submission date for the Commonwealth shall be February 1 of each year AND FOR A NONPROFIT ORGANIZATION OR INSTITUTION, THE LAST DAY OF ITS FISCAL YEAR.

(13) "Confidential employe" shall mean any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer.

(14) "Wages" means hourly rates of pay, salaries or other forms of compensation for services rendered.

(15) "Commonwealth employe" means a public employe employed by the Commonwealth or any board, commission, agency, authority, or any other instrumentality thereof.

(16) "Management level employe" means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision.

(17) "Meet and discuss" means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised.

(18) "Maintenance of membership" means that all employes who have joined an employe organization or who join the employe organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employe or employes may resign from such employe organization during a period of fifteen days prior to the expiration of any such agreement.

(19) "First level of supervision" and "first level supervisor" means the lowest level at which an employe functions as a supervisor.

ARTICLE IV
Employe Rights

Section 401. It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenace of membership provision in a collective bargaining agreement.

ARTICLE V
Pennsylvania Labor Relations Board

Section 501. The board shall exercise those powers and perform those duties which are specifically provided for in this act. These powers and duties shall be in addition to and exercised completely independent of any powers and duties specifically granted to it by other statutory enactments.

Section 502. The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the board shall prescribe.

Section 503. The board shall establish after consulting representatives of employe organizations and of public employers, panels of qualified persons broadly representative of the public to be available to serve as members of fact-finding boards.

ARTICLE VI
Representation

Section 601. Public employers may select representatives to act in their interest in any collective bargaining with representatives of public employes.

Section 602. (a) A public employer may recognize employe representatives for collective bargaining purposes, provided the parties jointly request certification by the board which shall issue such certification if it finds the unit appropriate.

(b) Any employe representatives in existence on JANUARY 1, 1970, shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this act; or until the board would find the unit not to be appropriate after challenge by the public employer, a member of the unit or an employe organization. The appropriateness of the unit shall not be challenged until the expiration of any collective bargaining agreement in effect on the date of the passage of this act.

Section 603. (a) A public employe, a group of public employes or an employe organization may notify the public employer that thirty percent or more of the public employes in an appropriate unit desire to be exclusively represented for collective bargaining purposes by a designated representative and request the public employer to consent to an election.

(b) If the public employer consents, the public employe, group of public employes or employe organization whichever applicable may submit in a form and manner established by the board an election request. Such request shall include a description of the unit deemed to be appropriate. The basis upon which it was determined that thirty percent or more of the employes desired to be represented and a joinder by the public employer. The board may on the basis of the submissions order an election to be held or it may at its discretion investigate or conduct hearings to determine the validity of the matters contained in such submissions before determining whether or not an order should issue.

(c) If a public employer refuses to consent to an election, the party making the request may file a petition with the board alleging that thirty per cent or more of the public employes in an appropriate unit wish to be exclusively represented for collective bargaining purposes by a designated representative. The board shall send a copy of the petition to the public employer and provide for an appropriate hearing upon due notice. If it deems the allegations in the petition to be valid and the unit to be appropriate it shall order an election. If it finds to the contrary it may dismiss the petition or permit its amendment in accordance with procedures established by the board.

(d) If a public employer receives notification that thirty per cent or more of the public employes desire to be exclusively represented for collective bargaining purposes by a designated representative and the party giving notice does not

thereafter seek an election the public employer may file a petition for the same with the board. The board shall then follow the procedures as established for petitions filed under subsection (c) of this section.

Section 604. The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over-fragmentization.

(2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employes, unless a majority of such professional employes vote for inclusion in such unit.

(3) Not permit guards at prisons and mental hospitals, EMPLOYES DIRECTLY INVOLVED WITH AND NECESSARY TO THE FUNCTIONING OF THE COURTS OF THIS COMMONWEALTH, or any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

(4) Take into consideration that when the Commonwealth is the employer, it will be bargaining on a Statewide basis unless issues involve working conditions peculiar to a given governmental employment locale. This section, however, shall not be deemed to prohibit multi-unit bargaining.

(5) Not permit employes at the first level of supervision to be included with any other units of public employes but shall permit them to form their own separate homogenous units. IN DETERMINING SUPERVISORY STATUS THE BOARD MAY TAKE INTO CONSIDERATION THE EXTENT TO WHICH SUPERVISORY AND NONSUPERVISORY FUNCTIONS ARE PERFORMED.

Section 605. Representation elections shall be conducted by secret ballot at such times and places selected by the board subject to the following:

(1) The board shall give no less than ten days notice of the time and place of such election.

(2) The board shall establish rules and regulations concerning the conduct of any election including but not limited to regulations which would guarantee the secrecy of the ballot.

(3) A representative may not be certified unless it receives a majority of the valid ballots cast.

(4) The board shall include on the ballot a choice of "no representative."

(5) In an election where none of the choices on the ballot receives a majority, a run-off election shall be conducted, the ballot providing for a selection between the two choices or parties receiving the highest and the second highest number of ballots cast in the election.

(6) The board shall certify the results of said election within five working days after the final tally of votes if no charge is filed by any person alleging that an "unfair practice" existed in connection with said election. If the board has reason to believe that such allegations are valid, it shall set a time for hearing on the matter after due notice. Any such hearing shall be conducted within two weeks of the date of receipt of such charge. If the board determines that the outcome of the election was affected by the "unfair practice" charged or for any other "unfair practice" it may deem existed, it shall require corrective action and order a new election. If the board determines that no unfair practice existed or if it existed, did not affect the outcome of the election, it shall immediately certify the election results.

(7) (i) No election shall be conducted pursuant to this section in any appropriate bargaining unit within which in the preceding twelve-month period an election shall have been held nor during the term of any lawful collective bargaining agreement between a public employer and an employe representative. This restriction shall not apply to that period of time covered by any collective bargaining agreement which exceeds three years. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

(ii) Petitions for elections may be filed with the board not sooner than ninety days nor later than sixty days before the expiration date of any collective bargaining agreement or after the expiration date until such time as a new written agreement has been entered into. For the purposes of this section, extensions of agreements shall not affect the expiration date of the original agreement.

Section 606. Representatives selected by public employes in a unit appropriate for collective bargaining purposes shall be the exclusive

representative of all the employes in such unit to bargain on wages, hours, terms and conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer and to have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract then in effect: And, provided further, That the bargaining representative has been given an opportunity to be present at such adjustment.

Section 607. If there is a duly certified representative: (i) a public employe or a group of public employes may file a petition for decertification provided it is supported by a thirty per cent showing of interest, or (ii) a public employer alleging a good faith doubt of the majority status of said representative may file a petition in accordance with the rules and regulations established by the board, subject to the provisions of clause (7) of section 605.

ARTICLE VII
Scope of Bargaining

Section 701. Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 702. Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives.

Section 703. The parties to the collective bargaining process shall not effect or implement A PROVISION IN a collective bargaining agreement if the implementation of that PROVISION would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Section 704. Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with FIRST LEVEL supervisors or their representatives, on matters deemed to be bargainable for other public employes covered by this act.

Section 705. Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

SECTION 706. NOTHING CONTAINED IN THIS ACT SHALL IMPAIR THE EMPLOYER'S RIGHT TO HIRE EMPLOYES OR TO DISCHARGE EMPLOYES FOR JUST CAUSE CONSISTENT WITH EXISTING LEGISLATION.

ARTICLE VIII

Collective Bargaining Impasse

Section 801. If after a reasonable period of negotiation, a dispute or impasse exists between the representatives of the public employer and the public employes, the parties may voluntarily submit to mediation but if no agreement is reached between the parties within twenty-one days after negotiations have commenced, but in no event later than one hundred fifty days prior to the "budget submission date," and mediation has not been utilized by the parties, both parties shall immediately, in writing, call in the service of the Pennsylvania Bureau of Mediation.

Section 802. Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within twenty days after mediation has commenced or in no event later than one hundred thirty days prior to the "budget submission date," the Bureau of Mediation shall notify the board of this fact. Upon receiving such notice the board MAY IN ITS DISCRETION APPOINT A FACT-FINDING PANEL WHICH PANEL MAY CONSIST OF EITHER ONE OR THREE MEMBERS. IF A PANEL IS so designated or selected IT shall hold hearings and take oral or written testimony and shall have subpoena power. If during this time the parties have not reached an agreement, the panel shall make findings of fact and recommendations:

(1) The findings of fact and recommendations shall be sent by registered mail to the board and to both parties not more than forty days after the Bureau of Mediation has notified the board as provided in the preceding paragraph.

(2) Not more than ten days after the findings and recommendations shall have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact-finding panel and if they do not, the panel shall publicize its findings of fact and recommendations.

(3) Not less than five days nor more than ten days after the publication of the findings of fact and recommendations, the parties shall again inform the board and each other whether or not they will accept the recommendations of the fact-finding panel.

(4) THE COMMONWEALTH SHALL PAY ONE-HALF THE COST OF THE FACT-FINDING PANEL; THE REMAINING ONE-HALF OF THE COST SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES. THE BOARD SHALL ESTABLISH RULES AND REGULATIONS UNDER WHICH PANELS SHALL OPERATE, INCLUDING, BUT NOT LIMITED TO, COMPENSATION FOR PANEL MEMBERS.

Section 803. If the representatives of either or both the public employes and the public employer refuse to submit to the procedures set forth in section 801 and 802 of this article, such refusal shall be deemed a refusal to bargain in good faith and unfair practice charges may be filed by the submitting party or the board may on its own, issue an unfair practice complaint and conduct such hearings and issue such orders as provided for in Article XIII.

Section 804. Nothing in this article shall prevent the parties from submitting impasses to voluntary binding arbitration with the proviso the decisions of the arbitrator which would require legislative enactment to be effective shall be considered advisory only.

Section 805. Notwithstanding any other provisions of this act where representatives of units of guards AT prisons or mental hospitals OR UNITS OF EMPLOYES DIRECTLY INVOLVED WITH AND NECESSARY TO THE FUNCTIONING OF THE COURTS OF THIS COMMONWEALTH have reached an impasse in collective bargaining and mediation as required in section 801 of this article has not resolved the dispute, the impasse shall be submitted to a panel of arbitrators whose decision shall be final and binding upon both parties with the proviso that the decisions of the arbitrators which would require legislative enactment to be effective shall be considered advisory only.

Section 806. Panels of arbitrators for bargaining units referred to in section 805 of this article shall be selected in the following manner:

(1) Each party shall select one member of the panel, the two so selected shall choose the third member.

(2) If the members so selected are unable to agree upon the third member within ten days from the date of their selection, the board shall submit the names of seven persons, each party shall alternately strike one name until one shall remain. The public employer shall strike the first name. The person so remaining shall be the third member AND CHAIRMAN.

(a) Whenever a panel of arbitrators is hereafter constituted pursuant to the provisions of Section 806 of the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act," the cost of the arbitrator selected by each party shall be paid by the respective party selecting the arbitrator. The cost of the impartial arbitrator selected by the arbitrators already selected or selected in accordance with the procedure set forth in Section 806 (2) of the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act," shall be paid by the Pennsylva[illegible]Labor Relations Board.

(b) The Pennsylvania Labor Relations [illegible]ard shall establish rules and regulations to implement this act. (Added by Act 67, 1976)

~~Section 807. The costs of the arbitrators selected under the provisions of section 806 shall be paid by the Commonwealth under rules and regulations established by the board.~~ (Repealed by Act 67, 1976)

ARTICLE IX

Collective Bargaining Agreement

Section 901. Once an agreement is reached between the representatives of the public employes and the public employer, the agreement shall be reduced to writing and signed by the parties. Any provisions of the contract requiring legislative action will only be effective if such legislation is enacted.

Section 902. If the provisions of the constitution or bylaws of an employe organization requires ratification of a collective bargaining agreement by its membership, only those members who belong to the bargaining unit involved shall be entitled to vote on such ratification notwithstanding such provisions.

Section 903. Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decisions of the arbitrator or arbitrators requiring legislation will only be effective if such legislation is enacted:

(1) If the parties cannot voluntarily agree upon the selection of an arbitrator, the parties shall notify the Bureau of Mediation of their inability to do so. The Bureau of Mediation shall then submit to the parties the names of seven arbitrators. Each party shall alternately strike a name until one name remains. The public employer shall strike the first name. The person remaining shall be the arbitrator.

(2) The costs of arbitration shall be shared equally by the parties. Fees paid to arbitrators shall be based on a schedule established by the Bureau of Mediation.

Section 904. Any provision of any collective bargaining agreement in existence on January 1, 1970 which is inconsistent with any provision of this act but not otherwise illegal shall continue valid until the expiration of such contract. The parties to such agreements may continue voluntarily to bargain on any such items after the expiration date of any such agreement and for so long as these items remain in any future agreement.

ARTICLE X

Strikes

Section 1001. Strikes by guards at prisons or mental hospitals, EMPLOYES DIRECTLY INVOLVED WITH AND NECESSARY TO THE FUNCTIONING OF THE COURTS OF THIS COMMONWEALTH are prohibited at any time. If a strike occurs the public employer shall forthwith initiate in the court of common pleas of the jurisdiction where the strike occurs, an action for appropriate equitable relief including but not limited to injunctions. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief, either in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court.

Section 1002. Strikes by public employes during the pendency of collective bargaining procedures set forth in sections 801 and 802 of Article VIII are prohibited. In the event of a strike during this period the public employer shall forthwith initiate an action for the same relief and utilizing the same procedures required for prohibited strikes under section 1001.

Section 1003. If a strike by public employes occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of this act have been completely utilized and exhausted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public. In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief in the court of common pleas of the jurisdiction where

the strike has occurred or the Commonwealth Court. Prior to the filing of any complaint in equity under the provisions of this section the moving party shall serve upon the defendant a copy of said complaint as provided for in the Pennsylvania Rules of Civil Procedure applicable to such actions. Hearings shall be required before relief is granted under this section and notices of the same shall be served in the manner required for the original process with a duty imposed upon the court to hold such hearings forthwith.

Section 1004. An unfair practice by a public employer shall not be a defense to a prohibited strike. Unfair practices by the employer during the collective bargaining processes shall receive priority by the board as set forth in Article XIV.

Section 1005. If a public employe refuses to comply with a lawful order of a court of competent jurisdiction issued for a violation of any of the provisions of this article the public employer shall initiate an action for contempt and if the public employe is adjudged guilty of such contempt, he shall be subject to suspension, demotion or discharge at the discretion of the public employer, provided the public employer has not exercised that discretion in violation of clauses (1), (2), (3) and (4) of subsection (a) of section 1201, Article XII.

Section 1006. No public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike.

Section 1007. In the event any public employe refuses to obey an order issued by a court of competent jurisdiction for a violation of the provisions of this article, the punishment for such contempt may be by fine or by imprisonment in the prison of the county where the court is sitting or both in the discretion of the court.

Section 1008. Where any employe organization wilfully disobeys a lawful order of a court of competent jurisdiction issued for a violation of the provisions of this article, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court.

Section 1009. In fixing the amount of the fine or imprisonment for contempt, the court shall consider all the facts and circumstances directly related to the contempt including but not limited to (i) any unfair practices committed by the public employer during the collective bargaining processes; (ii) the extent of the wilful defiance or resistance to the court's order; (iii) the impact of the strike on the health, safety or welfare of the public, and (iv) the ability of the employe organization or the employe to pay the fine imposed.

Section 1010. Nothing in this article shall prevent the parties from voluntarily requesting the court for a diminution or suspension of any fines or

penalties imposed. Any requests by employe representatives for such participation by the public employer shall be subject to the requirements of "meet and discuss."

ARTICLE XI
Picketing

Section 1101. Public employes, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of Article X pertaining to prohibited strikes.

ARTICLE XII
Unfair Practices

Section 1201. (a) Public employers, their agents or representatives are prohibited from:

(1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.

(2) Dominating or interfering with the formation, existence or administration of any employe organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization.

(4) Discharging or otherwise discriminating against an employe because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(6) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(7) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.

(9) Refusing to comply with the requirements of "meet and discuss."

(b) Employe organizations, their agents, or representatives, or public employes are prohibited from:

(1) Restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.

(2) Restraining or coercing a public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances.

(3) Refusing to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of this act as the exclusive representative of employes in an appropriate unit.

(4) Violating any of the rules and regulations established by the board regulating the conduct of representation elections.

(5) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.

(6) CALLING, INSTITUTING, MAINTAINING OR CONDUCTING A STRIKE OR BOYCOTT AGAINST ANY PUBLIC EMPLOYER OR PICKETING ANY PLACE OF BUSINESS OF A PUBLIC EMPLOYER ON ACCOUNT OF ANY JURISDICTIONAL CONTROVERSY.

(7) ENGAGING IN, OR INDUCING OR ENCOURAGING ANY INDIVIDUAL EMPLOYED BY ANY PERSON TO ENGAGE IN A STRIKE OR REFUSAL TO HANDLE GOODS OR PERFORM SERVICES; OR THREATENING, COERCING OR RESTRAINING ANY PERSON WHERE ANY OBJECT THEREOF IS TO (I) FORCE OR require any public employer to cease dealing or doing business with any other person or (ii) force or require a public employer to recognize for representation purposes an employe organization not certified by the board.

(8) Refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.

(9) Refusing to comply with the requirements of "meet and discuss."

ARTICLE XIII

Prevention of Unfair Practices

Section 1301. The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair practice listed in Article XII of this act. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that have been or may be established by agreement, law, or otherwise.

Section 1302. Whenever it is charged by any interested party that any person has engaged in or is engaging in any such unfair practice, the board, or any member or designated agent thereof, shall have authority to issue and cause to be served upon such person a complaint, stating the charges in that respect, and containing a notice of hearing before the board, or any member or designated agent thereof, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the board, member or agent conducting the hearing at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person, or otherwise, to give testimony at the place and time set in the complaint. In the discretion of a member or agent conducting the hearing or of the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding, the rules of evidence prevailing in courts of law or equity shall be followed but shall not be controlling.

Section 1303. Testimony shall be taken at the hearing and filed with the board. The board upon notice may take further testimony or hear argument. If, upon all the testimony taken, the board shall determine that any person named in the complaint has engaged in or is engaging in any such unfair practice, the board shall state its findings of fact, and issue and cause to be served on such person an order requiring such person to cease and desist from such unfair practice, and to take such reasonable affirmative action, including reinstatement of employes, discharged in violation of Article XII of this act, with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reasonable reports, from time to time, showing the extent to which the order has been complied with. If, upon all the testimony, the board shall be of the opinion that the person or persons named in the complaint has not engaged in or is not engaging in any such unfair practice, then the board shall make its findings of fact and shall issue an order dismissing the complaint. A copy of such findings of fact, conclusions of law, and order shall be mailed to all parties to the proceedings.

Section 1304. Until a transcript of the record in a case shall have been filed in a court as hereinafter provided, the board may at any time, upon reasonable

notice, and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it: Provided, That any agreement made between an employer and a bona fide employe organization, and all the provisions thereof, shall be entitled to full force and effect unless the board specifically finds that these provisions involve the commission of an unfair practice within the meaning of Article XII of this act.

Section 1305. The proceedings before the board or before any of its examiners shall be conducted with speed and dispatch. No findings shall be made on the basis of evidence relating to acts which occurred prior to the original passage of this act.

Section 1306. All cases in which complaints are actually issued by the board, shall be prosecuted before the board or its examiner, or both, by the representatives of the employe organization or party filing the charge, and, in addition thereto or in lieu thereof if the Department of Justice sees fit, by a deputy attorney general especially assigned to this type of case. No examiner shall have any other position with the government of this State or of the United States or with the Pennsylvania Labor Relations Board while in the employ of the board.

ARTICLE XIV
Unfair Practices During Article VIII Procedures

Section 1401. Notwithstanding any of the provisions of Article XIII, the board upon the filing of a charge alleging the commission of an unfair labor practice committed during, or arising out of the collective bargaining procedures set forth in sections 801 and 802 of Article VIII of this act, shall be empowered to petition the court of competent jurisdiction for appropriate relief or restraining order.

Upon the filing of any such petition the board shall cause notice thereof to be served upon such person and thereupon the court shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

ARTICLE XV
Judicial Review

Section 1501. The board shall except where an employe of the Commonwealth is involved have power to petition the court of common pleas of any county wherein the unfair practice in question occurred, or wherein any person charged with the commission of any unfair practice resides or transacts

business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the board. In the instance of the exception involving the said Commonwealth employes, the board shall file its petition in the Commonwealth Court. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief, restraining or mandamus order as it deems just and proper or requisite to effectuate the policies of this act and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the board. The parties before the court shall be the board, the person charged with the commission of any unfair labor practice, and may include the charging party. No objection that has not been urged before the board, its members or agents shall be considered by the court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by substantial and legally credible evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court, that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence at the hearing before the board, its members or agent, the court may order such additional evidence to be taken before the board, its members or agent, and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by substantial and legally credible evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court of common pleas, or the Commonwealth Court, as the case may be, shall be exclusive within the limits of its jurisdiction, and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court on appeal by the board or any party in interest, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken within a period of thirty days from the date of court's order and otherwise prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the Supreme Court, and the record so certified shall contain all that was before the court of common pleas or the Commonwealth Court, as the case may be.

Section 1502. Any person aggrieved by a final order of the board granting or denying, in whole or in part, the relief sought in any unfair practice case, or

by an order certifying or refusing to certify a collective bargaining agent of employes in any representation case, may obtain a review of such order in the court of common pleas of any county where the unfair practice in question was alleged to have been engaged in, or wherein such person or employer in a representation case resides or transacts business, or in the instance of Commonwealth employes in the Commonwealth court, as the case may be, by filing in such court, within thirty days after the final order has been issued by the board, a written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith served upon the board, and the board shall file in the court a transcript of the entire record in the proceeding certified by the board, including the pleadings and testimony and order of the board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under section 1501, and shall have the same exclusive jurisdiction to grant to the board such temporary relief, restraining or mandamus order as it deems just and proper or requisite to effectuate the policies of this act, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board, and findings of the board as to the facts, if supported by substantial and legally credible evidence, shall in like manner be conclusive. The parties before the court shall be any person aggrieved by an order of the board, as aforesaid, and the board and any other party to the board proceeding. The jurisdiction of the court of common pleas, or the Commonwealth Court, as the case may be, shall be exclusive within the limits of its jurisdiction, and its judgment and decree shall be final, except that the same shall be subject to review of the Supreme Court on appeal by the person aggrieved, or the board, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken within thirty days of the date of the court's order and otherwise prosecuted in the same manner and form, and with same effect, as is provided in other cases of appeal to the Supreme Court, and the record so certified shall contain all that was before the court of common pleas or the Commonwealth Court, as the case may be.

Section 1503. The commencement of proceedings under sections 1501 or 1502 of this article shall not, unless specifially ordered by the court, operate as a stay of the board's order.

Section 1504. When granting appropriate temporary relief, a restraining or mandamus order or making and entering a decree enforcing, modifying, or enforcing as so modified, or setting aside, in whole or in part, an order of the board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts. The act of June 2, 1937 (P. L. 1198), known as the "Labor Anti-Injunction Act," shall not be applicable to orders of the board, or to court orders enforcing orders of the board, or any provision of this act, or to violations of any order of the board, or of court orders enforcing orders of the board, or any provisions of this act.

Section 1505. Petitions filed under this act shall be heard expeditiously and, if possible, within ten days after they have been docketed. No petitions or charges involving questions arising under clause (2) of subsection (a) of section 1201 of Article XII shall relieve the board of determining any questions arising under sections 603, 604 and 605 of Article VI immediately, and in their regular and normal order, and the making of a certification thereon if such is warranted. No petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge.

ARTICLE XVI
Investigatory Powers

Section 1601. For the purpose of all hearings and investigations which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Article VI and Article XIII, and for the purpose of investigating and considering disputes, other than a question concerning the representation of employes, which it shall be the duty of the board to undertake whenever petitioned so to do by either an employe organization, an employer, or the representative of any unit of employes, the board shall have the investigatory powers granted in this article.

Section 1602. The board or its duly authorized agents shall at all reasonable times have access to, for the purpose of examination and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the board, its members or agent conducting the hearing or investigation. Such subpoenas shall be issued as a matter of right upon the request of either party at any time during the pendency of a proceeding. Any member of the board, or any agent designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

Section 1603. If any witness resides outside of the Commonwealth or through illness or other cause is unable to testify before the board or its members or agent conducting the hearing or investigation, his or her testimony or deposition may be taken within or without this Commonwealth, in such manner and in such forms as the board or its members or agent conducting the hearing, may by special or general rule prescribe.

Section 1604. In case of contumacy or refusal to obey a subpoena issued to any person except to any person representing the Commonwealth as an employer, when jurisdiction will be in the Commonwealth Court, the court of common pleas of any county within the jurisdiction of which the inquiry is

carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board, shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its members or agent, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order of the courts may be punished by said court as a contempt thereof.

Section 1605. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Section 1606. Complaints, orders and other process and papers of the board, its members or agent may be served, either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid, shall be proof of service of the same. Witnesses summoned before the board, its members or agent shall be paid the same fees and mileage that are paid witnesses in the courts of this Commonwealth, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this Commonwealth.

Section 1607. All process of any court to which application may be made under this act may be served in the county wherein the defendant or other person required to be served resides or may be found.

ARTICLE XVII
Employe Organizations

Section 1701. No employe organization shall make any contribution OUT OF THE FUNDS OF THE EMPLOYE ORGANIZATION either directly or indirectly to any political party or organization or in support of any political candidate for public office.

The BOARD shall establish such rules and regulations as IT may find necessary to prevent the circumvention or evasion of the provisions of this section.

IF AN EMPLOYE ORGANIZATION HAS MADE CONTRIBUTIONS IN VIOLATION OF THIS SECTION IT SHALL FILE WITH THE BOARD A REPORT OR AFFIDAVIT EVIDENCING SUCH CONTRIBUTIONS WITHIN NINETY DAYS OF THE END OF ITS FISCAL YEAR. SUCH REPORT OR AFFIDAVIT SHALL BE SIGNED BY ITS PRESIDENT AND TREASURER OR CORRESPONDING PRINCIPALS.

Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars ($2,000).

Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than thirty days or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

NOTHING HEREIN SHALL BE DEEMED TO PROHIBIT VOLUNTARY CONTRIBUTIONS BY INDIVIDUALS TO POLITICAL PARTIES OR CANDIDATES.

ARTICLE XVIII
Conflict of Interest

Section 1801. (a) NO person who is a member of the same local, State, national OR INTERNATIONAL organization as the employe organization with which the public employer is bargaining or who has an interest in the outcome of such bargaining which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in the collective bargaining processes WITH THE PROVISO THAT SUCH PERSON MAY, WHERE ENTITLED, VOTE ON THE RATIFICATION OF AN AGREEMENT.

(b) Any PERSON who violates subsection (a) of this section shall be immediately removed by the public employer from his role, if any, in the collective bargaining negotiations or in any matter in connection with such negotiations.

ARTICLE XIX
Penalties

Section 1901. Any person who shall wilfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance

of duties pursuant to this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five thousand dollars ($5,000), or by imprisonment for not more than one year, or both.

ARTICLE XX
Savings Provisions

Section 2001. The rights granted to certain public employes by the following acts or parts thereof shall not be repealed or diminished by this act:

(1) Section 24 of the act of August 14, 1963 (P.L. 984), known as the "Metropolitan Transportation Authorities Act of 1963."

(2) The act of November 27, 1967 (P.L. 628), entitled "An act protecting the rights of employes of existing transportation systems, which are acquired by cities of the third class or any authority thereof or certain joint authorities; requiring cities of the third class or any authority thereof or any such joint authority to enter into contracts with labor organizations acting for such employes, and providing for arbitration in case of disputes."

(3) Section 13.2 of the act of April 6, 1956 (P.L. 1414), known as the "Second Class County Port Authority Act."

Section 2002. This act shall not be construed to repeal the act of June 24, 1968 (Act No. 111), entitled "An act specifically authorizing collective bargaining between policemen and firemen and their public employers; providing for arbitration in order to settle disputes, and requiring compliance with collective bargaining agreements and findings of arbitrators."

Section 2003. Present provisions of an ordinance of the City of Philadelphia approved April 4, 1961, entitled "An Ordinance to authorize the Mayor to enter into an agreement with District Council 33, American Federation of State, County and Municipal Employes, A.F.L.-C.I.O., Philadelphia and vicinity regarding its representation of certain City Employes," which are inconsistent with the provisions of this act shall remain in full force and effect so long as the present provisions of that ordinance are valid and operative.

ARTICLE XXI
Separability

Section 2101. If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall

not affect, impair or invalidate the remainder of this act and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act would have been adopted had such invalid provisions not been included.

ARTICLE XXII
Repeals

Section 2201. The act of June 30, 1947 (P.L. 1183), entitled "An act relating to strikes by public employes; prohibiting such strikes; providing that such employes by striking terminate their employment; providing for reinstatement under certain conditions; providing for a grievance procedure; and providing for hearings before civil service and tenure authorities, and in certain cases before the Pennsylvania Labor Relations Board," is hereby repealed as to those public employes covered by the provisions of this act, and any penalties or other limitations currently in force or presently pending against any public employes, shall be deemed null and void.

ARTICLE XXIII
Effective Date

Section 2301. This act shall take effect in ninety days, except that the provisions of Article V and the amnesty provisions of the repealer shall take effect immediately.

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The following references are by no means a complete and exhaustive listing. These represent some of the references most directly tied to PSBA activities in negotiations. A fully comprehensive listing would likely involve something close to 1,000 references, a fact which suggests that there is an abundance of writing taking place in this field. These references are identified to the period prior to Act 195. This book reviews most of the experience since the enactment of Act 195.

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